

29 MARCH 1948

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Monday, 29 March 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE B. V. A. ROLING,
Member from the Kingdom of the Netherlands and HONORABLE
JUSTICE R. B. PAL, Member from India, not sitting from
0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

- - -

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except SHIRATORI and UMEZU who are represented by
5 counsel. The Sugamo prison surgeon certifies that they
6 are ill and unable to attend the trial today. The cer-
7 tificates will be recorded and filed.

8 With the Tribunal's permission the accused
9 KAYA will be absent from the courtroom the whole of the
10 morning session conferring with his counsel.

11 Mr. McManus.

12 MR. McMANUS: 58. In order to execute mili-
13 tary administration, of which he was in charge, in ac-
14 cordance with the governmental policy, ARAKI made the
15 following plans:

16 (1) To make the public have a correct view
17 of the situation; to stabilize the conditions in the
18 country through the realization of cooperation and
19 harmony among the military, the government, and the
20 people at large.

21 (2) To stabilize the conditions in the army
22 by means of a radical reshuffle of the army personnel.

23 (3) To check the rapid spread of the hostili-
24 ties by immediately putting an end to the disturbances
25 then taking place, and to make haste to terminate all

1 hostilities, as the first move in the peace measure
2 that is to follow.

3 With these three ends in view and with great
4 resolution, he set to work to administer military af-
5 fairs.

6 59. By then the disturbances had spread all
7 over Manchuria and it was necessary to put out explo-
8 sives, so to speak, taking fire everywhere and at all
9 times. Not alone in Manchuria but also in Japan there
10 were dangerous ignitable objects to be disposed of.
11 It was, nevertheless, but natural that ARAKI should
12 have attached primary importance to the cooperation and
13 conciliation among the military, the government, and
14 the people at large within the country. It was also
15 natural for him to have entertained great expectation
16 in the success of the diplomatic authorities who, in
17 accordance with the policy of the government, were en-
18 deavoring to obtain the understanding of the League of
19 Nations.

20 THE PRESIDENT: My colleagues keep asking
21 me, "Is this in evidence?" "Is that in evidence?"
22 I think the reply must be in the negative. However,
23 we can't waste time now in editing this summing up, or
24 summation, so proceed.

25 MR. McMANUS: To speak in parable form, the

1 situation was similar to a car darting down a slope,
2 at a great speed; it would have been futile to try to
3 stop it with one's bare hands. ARAKI had to jump into
4 this car, risking his own life, to apply the brake. It
5 was a year and a half later that the brakes worked, at
6 Tangku.

7 The first time he put on the brake, his objec-
8 tive was the repression of dangerous thoughts through
9 the conciliation among the military, the government,
10 and the people at large; the second time he did so he
11 aimed at the termination of hostilities at Shanghai and
12 the withdrawal of the entire Japanese troops; the third
13 brake was in connection with his efforts to terminate
14 as soon as possible the hostilities in Manchuria. We
15 should like to elucidate upon these points in the fol-
16 lowing pages.

17 After having succeeded in bringing to an end
18 the hostilities then going on, he proposed to the cabin-
19 et that preparations be made for the convening of a
20 Far East Peace Conference, by means of which he hoped
21 to put an end to international alienations, which he
22 thought was at the root of such hostilities.

23 Before the cabinet reached any decision on
24 this matter, however, he withdrew from the scene on
25 account of illness.

1 In the light of all these circumstances, it
2 would seem that not only was ARAKI void of any aggres-
3 sive intentions but, on the contrary, he voluntarily
4 let himself be involved in the whirlpool of a difficult
5 situation and finally saved it. He is in no way guilty.
6 Rather, it is our contention that his services in the
7 cause of peace should be given due recognition. Here-
8 inafter, we shall endeavor to prove this point.

9 7. Cooperation and Conciliation Among the
10 Army, the Government and the People. (A correct under-
11 standing of the situation and the stabilization of the
12 domestic conditions, through self-reflection, mutual con-
13 ciliation and cooperation.)

14 60. What ARAKI feared at the very outset of
15 his assumption of office as War Minister was a chaotic
16 confusion of Japan's public opinion. As he stated
17 in his speech entitled "Emergency Japan", it was his
18 opinion that the Japanese themselves were to blame
19 for Japan's isolated position and the insults offered
20 by other countries including China.¹ He believed that
21 the key to the solution of the internal confusion and
22 to the recovery of Japan's international confidence lay
23 in the Japanese people's self-reflection and awakening
24 to the importance of peace. Accordingly, though busily
25

1. Chapter 4 and Annex 1 of Ex. 148

1 engaged in state affairs, he found time to make speeches
2 and to publish his ideas, for the guidance of the people.
3 His speech "Emergency Japan", his talk over the radio¹
4 addressed to boys and girls in time of emergency, and
5 so on, constitute examples of such. However, "Japan's
6 Mission in the Showa Era",² (which was written by
7 Mr. KINOSHITA, Takeshi, according to an outline given
8 at the request of the Social Education Association),
9 and "An Appeal to the Whole Nation",³ (compiled by Mr.
10 SOMEI, the then Principal of the Aoyama Normal School,
11 who relied upon newspapers and magazine articles) were
12 not written by ARAKI himself and therefore ARAKI could
13 not be held responsible for those publications.

14 Thinking it a national disgrace that the mili-
15 tary officers and the government officials were at
16 odds with each other, ARAKI strove to take the lead
17 in cultivating cordial relations with the other members
18 of the cabinet. For example, for two fiscal years the
19 army turned over to the navy a certain amount from the
20 army appropriations.⁴ In dealing with matters pertain-
21 ing to diplomacy, he was always obedient to the views
22 of the Foreign Minister and other diplomatic authori-
23 ties; never once did he act contrary to their views
24

25 1. Def. Doc. 1960

2. Ex. 760

3. Ex. 3164

4. HARADA Memoirs

1 and policies. An excerpt from HARADA Memoirs asserted
2 that ARAKI, together with Foreign Minister UCHIDA,
3 advocated Japan's withdrawal from the League of Nations,
4 which assertion, however, must have been based upon
5 supposition, since the details of the cabinet meetings
6 are not known. At any rate, this is an example of
7 ARAKI's confidence in the Foreign Minister and agree-
8 ment in views with him in point of diplomacy. ARAKI
9 looked for the Imperial Way as the basis for national
10 unity and sought, by observing His Majesty's injunc-
11 tions and being loyal to him, to develop to the fullest
12 extent the inherent Japanese characteristics and there-
13 by to sober down the general excitement. I shall now
14 delete the rest of that paragraph.

15
16 61. Simultaneously with appealing to the gen-
17 eral public, he required his subordinates in the army
18 strictly to maintain discipline. In view of the fact
19 that the officers of medium grades and younger officers
20 had been in a more or less wild mood ever since the
21 March and October Incidents, he not only strictly ad-
22 monished them to act within limits, to be obedient to
23 their seniors, and to become officers worthy of His
24 Majesty's affection, but also made strenuous efforts to
25 guide them in a proper direction. As a result, not a
single young officer of the army participated in the

1 May 15th Incident. Unfortunately, however, eleven
2 cadets of the military academy were involved in the
3 Incident. Deeply feeling his responsibility, ARAKI
4 at once tendered his resignation and recommended a cer-
5 tain person as his successor. He remained in office,
6 however, pressed to do so by Prime Minister SAITO.

7 62. Further, ARAKI ardently promoted coopera-
8 tion not only within the army itself but also between
9 the army and the navy, on the contention that if the
10 army and the navy, instead of cooperating were at odds
11 with each other, they would become vulnerable to possi-
12 ble insults, which eventually may lead to some disturb-
13 ances.

14 On 3 July 1946, in the course of Counsel
15 OKAMOTO's cross-examination of witness OKADA, Keisuke,
16 the witness admitted that in 1932 the army had turned
17 over to the navy a certain amount from the army approp-
18 riations and stated that "It was a fact that the Army
19 took a very humble attitude towards the Navy." This
20 testimony corroborates our position.

21 For the salvation of the agrarian communities,
22 which had been impoverished to such an extent as to
23 give rise to hostile feelings between urban and rural
24 inhabitants, ARAKI, towards the end of 1933, proposed
25

1 to convene a Five Ministers' Conference in order to
2 establish appropriate policies. He was present at
3 this meeting and assisted the Agriculture and Forestry
4 Minister in determining the fundamental policies to
5 deal with the agrarian problems. Realizing himself
6 that the absence of such virtues as conciliation, peace
7 and cooperation not only occasioned petty frictions
8 within the country but also, as a result of such, in-
9 vited other countries' contempt, ARAKI endeavored to
10 put his ideas into practice in the actual administra-
11 tion of the affairs of state. He thus made it clear
12 in actual practice that he was not defiant, not egois-
13 tic, not exclusive, not prejudiced nor bigoted in his
14 ideas. He maintained the same attitude also toward
15 international affairs. It is a well-known fact that
16 he advocated conciliation in connection with the im-
17 portation of rice from Siam and also with the agreement
18 with Lancashire concerning cotton spinning. The idea of
19 exploitation or aggression had never entered his mind.
20

21 I shall delete the balance of that paragraph.

22 C. ARAKI's Reshuffle of the Army Personnel

23 63. In order to tone down, on the one hand,
24 the extreme reformists all over the country, and on the
25 other hand to calm down the outbursts of strong emotion

1 of the leaders on the spot in Manchuria, ARAKI thought
2 it of foremost importance to effect a large-scale re-
3 shuffle of the army personnel, and in spite of many
4 difficulties arising from the fact that the Incident
5 was in progress, he carried it out as soon as possible.
6 That those involved in the March and October Incidents
7 were removed one after another from important posts
8 in the Central Army offices has been revealed by the
9 testimony of the accused HASHIMOTO, the testimony of
10 witness WACHI, Takaji,¹ and the testimony of witness
11 TANAKA, Ryukichi.²

12 THE PRESIDENT: You struck out the last sen-
13 tence of the preceding paragraph. Actually, you should
14 have struck out the whole paragraph. However, proceed.

15 We are disregarding everything not supported
16 by evidence. Our only regret is the time we are wasting
17 in reading material of which we can make no use.

18 MR. McMANUS: May I proceed, your Honor?

19 THE PRESIDENT: Yes.

20 MR. McMANUS: War Minister ARAKI, between the
21 time of his appointment as such and August of the fol-
22 lowing year, the time of the aforementioned personnel
23 change, replaced extremists and belligerents with men
24 who were moderate and impartial and who were sincere
25

1. Ex. 2424, T. 19,667

2. T. 2062

1 and diligent in conducting military affairs. This is
2 clearly shown in Section 8 of witness KAWABE, Torashiro's
3 affidavit.¹

4 Not only in view of the fact that the personnel
5 of the Japanese Army headquarters at the front had
6 become quite exhausted, but also in order to execute
7 thoroughly the new policies resulting from the establish-
8 ment of the New State of Manchukuo, ARAKI effected a
9 complete change in the personnel of the Kwantung Army.
10 He recommended as the new Commander-in-Chief Field Mar-
11 shal MUTO, a man of character, broad views, and intel-
12 ligence. Witness HASHIMOTO referred to this question
13 in the course of Counsel OKAMOTO's cross-examination
14 on 24 March 1947. The witness testified that in August,
15 Commander-in-Chief HONJO was transferred, that in April,
16 Chief of Staff MIYAKE was replaced by HASHIMOTO (not
17 the accused HASHIMOTO), and in August the witness him-
18 self was transferred.²

19
20 65. This radical shake-up laid ARAKI open to
21 the severe censure and to the later movement for ostra-
22 cizing him. Yet, so drastic was the measure that its
23 effect was equally remarkable. There was now closer
24 cooperation between the Kwantung Army and the army
25 authorities in Tokyo. It was under such circumstances

1. Ex. 2408, T. 19,424
2. T. 19,028

1 that the Tangku Agreement was concluded and the dis-
2 turbances came to an end. Upon close study of this
3 matter, your Honors will find that by August 1932 those
4 who had played major roles in various incidents had been
5 removed from their posts in the central army offices.

6 66. Further, in connection with this personnel
7 shake-up, the witness INUKAI, Ken, testified on 28 June
8 1946 that "Around December of 1931, there was still an
9 opinion within the General Staff and the War Ministry
10 that Manchukuo should not be established as an inde-
11 pendent state. . . In January 1932, following personnel
12 shifts within the army, this opinion ceased, and the
13 great majority of the army were convinced that Manchukuo
14 should be established as a separate state. For instance,
15 one section chief in the General Staff who had been sym-
16 pathetic with my father's views was shifted to the
17 command of the regiment at Kanan in Korea.¹"

18
19 That by the "section chief in the General
20 Staff" was meant Colonel SHIGETO, Chiaki, who had
21 participated actively in the March Incident was made
22 clear in the KIDO Diary,² as well as in the testimony
23 if the witness FUJITA, Isamu, made on 27 June 1946.³

24 In view of this fact it was quite natural that

25 1. T. 1,548

2. Ex. 179-C, T. 1,928

3. T. 1,465

1 Colonel SHIGETO should be demoted in connection with
2 the personnel shake-up effected under War Minister
3 ARAKI.

4 Whatever might have been the circumstances
5 surrounding his testimony, it is extremely strange
6 for INUKAI to imply in his testimony that Manchukuo
7 was established by relegating Colonel SHIGETO and others
8 who had maintained that the sovereign rights should be
9 respected.

10 To begin with, the independence of Manchukuo
11 was not worked out through the machinations of the
12 Japanese military.

13 The fact is, prior to the Manchurian Incident,
14 the Chang family had declared the independence of the
15 region. Later, because of the maladministration by
16 the Changs, and in view of the past historical develop-
17 ments of Manchuria, various attempts were made to claim
18 independence from the rest of China. With the outbreak
19 of the Manchurian Incident there was a strong demand
20 voiced by Manchukuoans themselves for the establishment
21 of an independent state. The official view of the
22 Kwantung Army on this matter, based upon the necessity
23 for the maintenance of public order, was first sub-
24 mitted to the central army office, particularly to the
25 INUKAI Cabinet on 4 January 1932, by Colonel ITAGAKI,

1 who came up to Tokyo.

2 Circumstances surrounding this matter are
3 stated ¹ in ITAGAKI's affidavit, as well as in ARAKI's
4 ² own affidavit.

5 Accordingly, INUKAI's testimony serves to
6 prove, if anything, that War Minister ARAKI's personnel
7 purge was a thorough-going one, but not at all that
8 he attempted to establish Manchukuo by relegating offi-
9 cers who advocated paying respect to China's sovereign
10 rights.

11 D. ARAKI's Efforts to Terminate Fighting and
12 for the Restoration of Peace.

13 67. We wish to submit first of all that noth-
14 ing is as far from the facts than to say that ARAKI
15 formulated the plan for the occupation of China's four
16 eastern provinces. We wish to emphasize that he made
17 sincere efforts at terminating the hostilities and
18 restoring peace and order in Manchuria.

19 68. In the introduction of the present docu-
20 ment we have pointed out that the prosecution has in-
21 troduced into evidence notes taken while interrogating
22 ARAKI. The prosecution further tendered in evidence
23 three excerpts, Nos. 188-A, B and C, from the same exhibit,
24

- 25 1. Ex. 3316, T. 30,278
 2. Ex. 3161
 3. Ex. 187

1 in order to prove that ARAKI formed a plan for the occu-
2 pation of the Chinese four eastern provinces.

3 These notes were not taken down in shorthand,
4 they were neither shown nor read to the accused, and
5 were neither sworn to nor signed by him. It is our
6 contention that these documents are nothing more than
7 a prosecutor's memoranda. Due to faulty interpreta-
8 tion, there was a serious lack of understanding between
9 the prosecutor and ARAKI, which caused many errors
10 found throughout the memoranda.

11 Mr. Comyns Carr summoned on 4 September 1947
12 three prosecution interpreters to the court, and re-
13 quested ARAKI to identify them one by one. We feel
14 that this practice by the prosecutor was insufficient,
15 as only three interpreters were produced, and, further-
16 more, it certainly can be no test of the correctness
17 or inaccuracy of the contents of the interrogations or
18 memoranda.

19 We intended, should the interpreters be for-
20 mally called to the witness stand, to point out tho-
21 roughly the places where misinterpretations occurred
22 so that the court should be clearly informed of the
23 circumstances wherein ARAKI was misquoted. However,
24 the interpreters were never summoned as formal witnesses,
25 and the whole affair presented a lamentable lack of

clarification.

1 However, the following comments are added by
2 way of refutation.

3 69. In ARAKI's handwritten answer to the
4 prosecutor concerning the circumstances of the disposi-
5 tion of the Manchurian Incident,¹ there was embodied
6 therein nothing about the alleged plan for the occu-
7 pation of the Chinese four eastern provinces, simply
8 because he had no such intention. During the cross-
9 examination of ARAKI, the prosecutor spoke about this,
10 and charged ARAKI's omission proved that he had an
11 aggressive intention. Such a charge lacks a proper
12 foundation.
13

14 70. The prosecution in their tender of ARAKI's
15 interrogations,² quoted many excerpts therefrom, but it
16 is particularly brought to the Tribunal's attention
17 that they failed to point out other portions of ARAKI's
18 interrogatories which clearly show that throughout
19 the period in question he exerted his utmost for "the
20 restoration of public peace and order." Specific points
21 brought out are as follows:

22 His advocacy of a passive occupation of Man-
23 churia which was threatened with general disorder (In-
24 terrogatories dated 5th February);
25

1. Ex. 3162

2. Ex. 187

1 His advocacy of a non-extension of the Man-
2 churian Incident, and his wishes for its speedy termina-
3 tion;

4 His advocacy to bring peace and order to Man-
5 churia at the earliest date (circumstances did not allow
6 an immediate withdrawal of the Japanese forces into
7 the railway zone) and his statement "I /AAKI/ wanted
8 to take the most effective measures for preventing the
9 Incident from spreading all over China, thereby to
10 t rminate the Incident locally and ultimately." (In-
11 terrogatories dated 7th February);

12 His further statement, "As the War Minister
13 it was my duty to bring the Incident to a speedy ter-
14 mination; I advocated the opening of diplomatic nego-
15 tiation; however, the war had already begun then."
16 (Interrogatories dated 8th February);

17 Now we come to his statement that the plan
18 for the restoration of public peace and order was drawn
19 up on 17th December 1931; however, AAKI was not sure
20 of the exact date. (Interrogatories dated 13th Feb-
21 ruary).

22 It should be pointed out here that the gov-
23 ernment's decision was said to have been made on 17th
24 December. The reason for AAKI not stating this point
25 clearly in his handwritten answer to the prosecutor is

1 that Mr. Hider of the prosecution named 17th December
2 as the date of the plenary session of the Privy Council
3 at which session the plan would have been made. Though
4 in his mind ARAKI seriously doubted the accuracy of the
5 date so named, he had to accept the prosecutor's word
6 for the time being. Later it was established that the
7 plenary session of the Privy Council took place on 30th
8 January 1932. Because of this circumstance ARAKI
9 specifically mentioned the date as the 17th December,
10 which of course was an error, and therefore the prose-
11 cution's statement that this plan was made four short
12 days after ARAKI became War Minister is erroneous.

13 We are forced to conclude that the prosecutor
14 simply ignored all these points, and composed the in-
15 terrogatories by taking advantage of insufficient in-
16 terpretation by the interpreters, or by making the ac-
17 cused answer yes or no to questions which included the
18 prosecutor's own conclusions.

19 For instance, exhibits Nos. 188-A, B and C
20 contain serious mistakes. As to the dates of inter-
21 rogation, 188-A was taken on 15th February. Particu-
22 larly the latter portion of the exhibit No. 188-C, the
23 interrogatory taken on 8th February contain passages
24 which are beyond our comprehension.

25 1. Ex. 3174

I shall leave out the next sentence.

1 Briefly speaking, however, concerning the
2 alleged decision upon the plan of occupation of the
3 Chinese four eastern provinces, ARAKI himself never
4 employed the word "occupation". In the latter section
5 of Paragraph 2 of his affidavit ¹ ARAKI emphatically
6 denies the use of this particular term. Either
7 interpreters' mistake or the prosecutor's misunder-
8 standing caused ARAKI's explanation for the INUKAI
9 Cabinet's decision upon its Manchurian policy to be
10 wrongly put down in his interrogatories. ²

12 The prosecutor also misunderstood that the
13 creation of the Chinese four eastern provinces by
14 adding Jehol Province to the theretofore three eastern
15 provinces was due to the widening by ARAKI of the
16 scope of the occupation plan of the region.

17 However, the fact that since 1928 Jehol had
18 been included in the sphere of influence of Chang
19 Hsueh-liang as the Commander-in-Chief of the North-
20 eastern Frontier Army was clearly set forth in the
21 Lytton Report. ³ It is extremely regrettable that such
22 an obvious fact should rouse an extraordinary suspicion
23 on the part of the learned prosecutor.

- 24
25
1. Ex. 3161, pp. 10-11, 10 Sept. 1947, No. 268
 2. cf. Para. 28-3 of ARAKI's affidavit and the Appendix of the present document.
 3. T. 18,719

(71) During the cross-examinations of witness
1 TAKEDA, Hisashi on 4 April 1947,¹ and of witness
2 KAWABE, Torashiro on 4 April 1947,² the prosecutor
3 questioned them concerning the plan of occupation.
4 Both witnesses definitely answered they neither laid
5 eyes on, nor heard about such a decision, In view of
6 the total absence of the alleged fact and the conse-
7 quent lack of proof it is but natural that no matter
8 how hard the prosecutor should try he should be un-
9 able to uncover a justifiable basis for this accusation.
10

(72) Witness MAZAKI, Jinzaburo, stated in
11 his affidavit³ that upon his appointment as Vice-Chief
12 of the Army General Staff, the then War Minister ARAKI
13 had told him as follows:
14

15 " . . . the situation has simply become more
16 aggravated. As there is every danger that it
17 will develop into a regular war, we must leave
18 no stone unturned in immediate saving of this
19 complicated situation. . . I think there will
20 be no need of further operations unless our
21 Army is challenged. At any rate, we will try
22 to cease hostilities within the smallest possible
23 scope. The Government is on principle dealing
24

25 (1. Tr. 19,380
2. Ex. 2408, Tr. 19,444
3. Ex. 3168, Tr. 28,457)

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11 (72) Witness MAZAKI, Jinzaburo, stated in
12 his affidavit³ that upon his appointment as Vice-Chief
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25 (1. Tr. 19,380
2. Ex. 2408, Tr. 19,444
3. Ex. 3168, Tr. 28,457)

1 with Chang Hsueh-liang who is still disturbing
2 peace and order. Therefore our scope of oper-
3 ation is limited under any condition within
4 his sphere of influence. Bearing this in mind,
5 please control the Army strictly. At my
6 appointment my predecessor told me almost the
7 same thing. At the time . . . I met Premier
8 INUKAI . . . who also made some remarks on the
9 situation which was more or less similar to
10 that of War Minister ARAKI."

11 (73) Again, in the testimony of NAKAJIMA,
12 Torakichi¹ there is the following passage:

13 "/The General (ARAKI)/ was then very
14 much worrying over the Manchurian Incident.
15 He said that there was a danger of it develop-
16 ing into an all out clash between Japan and
17 China, if we should leave it to take its own
18 course. . . . I for myself should do my best
19 to put an end to the armed fighting now going
20 on, and to prevent the danger of an all out
21 clash between Japan and China."

22 Prosecution witness INUKAI, Ken, in answer
23 to a question² expressed his belief that War Minister
24 ARAKI had endeavored to check the expansion of the
25

(1. Ex. 3173, Tr. 28,557
2. Tr. 1,489)

unfortunate Incident. In view of the testimonies of these witnesses alone, it is clear that ARAKI thought and acted for the sole purpose of bringing the hostilities to an end.

(74) War Minister ARAKI, in his speech¹ at the 61st Session of the Imperial Diet (24 March 1932) summarized the Manchurian situation as follows:

"At present, the Japanese forces now staying in Manchuria number less than 30,000 and are stationed in the vast area of Manchuria and Mongolia more than two times ~~as~~ a half as large as our empire and are directly charged with protection of the lives and properties of the 1,000,000 Japanese and Korean residents and indirectly with the preservation of peace and welfare of the 30,000,000 inhabitants. The soldiers have fulfilled their duty with unflinching rectitude to take up their stand on the life-line of national defence and safeguarded national security."

This makes it evident that ARAKI, in conformity with the policy of the Government, was earnestly devoted to the main duty of preserving peace and order and strengthening the national defense.

(1. Lx. 3167, Tr. 28,439)

(75) At the plenary session of the Privy¹
Council on 30 January 1932, Foreign Minister
YOSHIZAWA clearly defined the objective of the
Government, by stating as follows:

"... the first object of our action in
Manchuria is the maintenance of peace and
tranquillity, this being our fundamental
policy toward Manchuria. . . the peace of
that region is an absolute necessity to our
Empire.

I shall omit the next paragraph.

Thus it is clear that ARAKI, as the War
Minister of the INUKAI Cabinet, exerted faithfully
his utmost to terminate the Manchurian Incident,
since to do so in accordance to the cabinet policy,
he thought, was in line with his official duties.

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1 There have been actual instances where its
2 lack of a definite policy made a government powerless
3 to deal with incidents, and invite its antagonist's
4 contempt.

5 In view of these instances, it was necessary
6 for the INUKAI Cabinet to formulate through the cabinet
7 council a definite policy. The cabinet policy once
8 formed, ARAKI as the War Minister transmitted the basic
9 policy to the Chief of the Army General Staff, and
10 himself took charge of matters concerning military
11 administration, which were required for putting
12 operational matters into execution by the Army General
13 Staff.

14 In accordance with the governmental policy
15 transmitted via the Army Minister the Army General Staff
16 effected troop movements whenever necessities arose
17 for the protection of Japanese residents in China and
18 for the maintenance of public peace and order in the
19 region. As soon as such necessities ended forces so
20 despatched were immediately withdrawn. The most
21 conspicuous instance is found in connection with the
22 Shanghai Incident.

23 The entire incident came to an end with the
24 conclusion of the Tang-ku Agreement.
25

 We submit that the aforementioned evidence

1 proves abundantly that ARAKI, in strict accordance with
2 the set governmental policy, acted throughout the tenure
3 of duty within the definite sphere of his own juris-
4 diction, for discharging his official duties as the
5 War Minister.

6 In line with the governmental policy, ARAKI
7 cooperated and as the result, many untoward incidents
8 which threatened to break out at various places were
9 successfully forestalled, and the Tangku Agreement was
10 arrived at one year and a half later.

11 II. Next we come to the question of the
12 legitimacy of Japan's right to self-defense in Manchuria.

13 The question of self-defense having been
14 decided upon by the preceding cabinet, the INUKAI
15 Cabinet entertained no doubts whatsoever as to its
16 legitimacy. In our submission, ARAKI, who was acting
17 on this belief by the government has nothing to do
18 with the question of the right of self-defense before
19 this Tribunal.
20

21 (80) However, it is pointed out to the court
22 that Chapter I of the Lytton Report gives detailed
23 account of the

24 (1) existence of bandits,

25 (2) existence of several rival political

regimes, and the consequent difficulty of exercising

control over local troops, and

(3) conspicuous increase in cases of mass outrages due to the infiltration of communism.

China has not been capable of fulfilling her obligation of protecting foreign nationals who are residing, according to the provisions of treaties, within her territories. The right of the home government of the residents, who suffered losses and damages, to protect its nationals is recognized by international law.

In fact the condition at that time was so complicated that even Lord Lytton admitted in his report that a mere restoration of the status quo would be no solution.¹ WAKATSUKI Cabinet in its Second Declaration expressed the same view. From these two facts, it is clear that the state of danger was still existing.

Having learned through the Foreign Office's researches in treaty provisions and international law, the legitimacy of exercising the right of self-defense, ARAKI felt perfectly secure in his continued exercise of the right, beginning at the time of his assumption to the War Minister's post. The termination of the hostilities, however, was always his objective.

From a purely operational point of view, by the use of a sufficient number of troops, the enemy

1. Lytton Report, p. 127.

1 could have been immediately suppressed. In order to
2 avoid entering into a full-scale war with China, ARAKI
3 dealt with the incident with a minimum army strength,
4 and without mobilizing additional forces.

5 The entry as to the use of a large force¹
6 toward the end of the SAIONJI-HARADA Memoir appears to
7 be HARADA's account of what ARAKI told him as an
8 instance of a pure operational matter. Being a non-
9 military man HARADA apparently was unable to grasp its
10 whole significance.

11 At the Council of the League of Nations held
12 on 10 December 1931, the reservation as to the right
13 to suppress bandits was recognized. The actions of
14 self-defense based upon this approved right have con-
15 stituted the foundation of operations since the sup-
16 pression of bandits in Chinchow. Questions concerning
17 this matter are made clear by Foreign Minister YOSHI-
18 ZAWA's address at the Diet.²

19 III. The pacification of the Chinchow District
20 was due to the insincerity on the part of Chang Hsueh-
21 liang and the Chinese side. The military action was
22 taken for the purpose of preventing the district from
23 danger.
24

25 82. The prosecution contends that the INUKAI

1. Ex. No. 3768.

2. Ex. No. 2413, Tr. 19,521.

1 Cabinet, because of the fact that the pacification of
2 the Chinchow district was carried out after the forma-
3 tion of the cabinet, extended the occupation of Man-
4 churia and thus executed aggression in Manchuria and
5 charges ARAKI, then the War Minister, with this respon-
6 sibility. However, the circumstances of the general
7 danger at the time when the INUKAI Cabinet was formed,
8 i.e., when ARAKI assumed the office of the Minister of
9 War, are stated in the preceding chapter and the Chin-
10 chow problems was one of the most important questions
11 left unsolved by the preceding cabinet.

12 In other words, soldiers were dispatched but
13 were soon recalled from the Chinchow district during
14 the latter part of November towards the end of the
15 preceding WAKATSUKI Cabinet, and diplomatic negotia-
16 tions were started to solve the dispute concerning the
17 Chinchow district, which, however, were brought to a
18 standstill. This fact was taken advantage of by the
19 bandits and their instigators who centered in and
20 around Chinchow and they intensified threats against
21 Mukden and its vicinity. The INUKAI Cabinet was formed
22 during this period. Chang Hsueh-liang and the Chinese
23 side still failed to carry out their promise; moreover,
24 the fact that soldiers were once dispatched but were
25 recalled during the period of the preceding cabinet

1 was made a subject of counter-propaganda by the Chinese
2 side who claimed that they had won the victory, where-
3 upon the activities of bandits were greatly increased.
4 Furthermore, the troops under Chang Hsueh-liang insti-
5 gated and joined hands with them. They crossed the
6 Liao River and were menacing the vicinity of Mukden
7 exposing the Japanese residents and troops to imminent
8 danger.¹

9 Taking into consideration the general trend,
10 the INUKAI Cabinet decided upon a general plan to
11 restore peace and order as part of the Manchurian
12 Incident; at the same time, it continued diplomatic
13 negotiations for a further two weeks. During this
14 period, the activities of the bandits became most out-
15 rageous and as many as three to four hundred atrocities
16 were reported in only ten days. These atrocities in-
17 creased daily and amounted to more than 1,500 cases
18 for the forty days since the negotiations were started
19 until December 27, which immediately preceded the dis-
20 patch of Japanese troops. Thus the Japanese residents
21 and even the Japanese troops were faced with imminent
22 danger. Moreover, the diplomatic negotiations which
23 were still continued received lip service only and no
24 concrete results were achieved, which, of course,
25

1. Cf. The Lytton Report: The occupation of Chinchow,
p. 154.

1 contributed to increase the danger and small skirmishes
2 at the front line. The INUKAI Cabinet, then in about
3 two weeks after its formation, i.e., in about one month
4 after the diplomatic negotiations were started, was
5 compelled to take necessary measures for the protection
6 of the Japanese residents as well as to save the
7 Japanese troops. Japan, thereupon, issued a statement
8 on December 27 and resorted to armed actions from the
9 end of December by virtue of her right to suppress band-
10 dits condoned by the League of Nations on December 10.
11 The Japanese Government, moreover, declared at that
12 time that the whole responsibility for this action
13 rested with the Chinese side. Once this firm decision
14 was expressed, the bandits as well as the troops under
15 Chang Hsueh-liang which supported them began a general
16 retreat and the bloodless entry into Chinchow was accom-
17 plished on January 3. Thus the basis for the distur-
18 bance of peace and order in this district as well as
19 causing disturbances around Mukden was obliterated.
20 In accordance with the policy decided by the government,
21 ARAKI informed the Army General Staff of the extent
22 of the military action to be taken and the latter took
23 charge of its execution. Although no specific and
24 definite evidence has been offered by the prosecution
25 with respect to this action, it is tied in with the

1 decision of the policy referred to above and ARAKI's
2 responsibility is charged in counts 2, 6, and 27. It
3 is our contention, however, that this is an extremely
4 arbitrary conclusion and belies the actual state of
5 affairs. The defense submit the following evidence to
6 disprove the foregoing allegation.

7 83. Various facts with respect to the dangerous
8 condition of the district.

9 a. The Lytton Report¹ states:

10 "The districts evacuated by the Japanese were
11 reoccupied by the Chinese troops, and this fact was
12 widely advertised. Chinese morale was slightly raised;
13 and the activities of irregular forces and bandits
14 increased. Profiting by the winter season, they crossed
15 the frozen Liao River at many points and raided the
16 country around Mukden. The Japanese military authori-
17 ties realized that even to maintain their existing
18 positions reinforcements would be necessary, and with
19 these reinforcements they hoped to be able to get rid
20 of the menace of the Chinese concentration at Chinchow."

21 Hence the Lytton Report itself proves that
22 the Japanese Government could not remain indifferent.
23 Moreover, how the measures adopted by the preceding
24 cabinet to advance troops once and then recall them
25 made the opposing party grow presumptuous and brought

1. pp. 154-155.

1 about bad results is well-established not only by the
2 Chinchow Incident but also by the fact witnessed in
3 later years in the Shanghai district. The Lytton
4 Report further states: ¹

5 "The stout resistance put up from the first
6 by the Chinese 19th Route Army, with the assistance
7 later of the 88th Guard Divisions was hailed through-
8 out China with the greatest enthusiasm, and the fact
9 that the original three thousand marines had to be
10 supplemented by three divisions and a mixed brigade
11 of the Japanese Army before the Chinese forces were
12 finally dislodged and driven back after six weeks of
13 fighting created a profound impression upon Chinese
14 morale. The feeling prevailed that China must be saved
15 by her own efforts. The Sino-Japanese conflict was
16 brought home to the people throughout China. Every-
17 where opinion hardened and the spirit of resistance
18 increased. In Manchuria the news from Shanghai put
19 heart into the scattered forces still opposing the
20 Japanese troops. It encouraged the subsequent resis-
21 tance of General Ma Chan-shan and stimulated further
22 resistance of all Chinese. The resistance of the
23 Volunteer Armies increased. Expeditions to suppress
24 them met with indifferent success, and in most areas
25 1. pp. 175-176.

1 the Japanese stood on the defensive, taking up positions
2 along certain railway lines which were frequently
3 attacked."

4 Hence this passive attitude of the Japanese
5 only tended to increase hostilities.

6 84. The declarations before hostilities
7 began by Division Commander UEDA and Commander-in-Chief
8 SHIRAKAWA made in compliance with the desire of ARAKI
9 to promote peace from the beginning and to keep the
10 damages to the minimum in the Shanghai area met with
11 unexpected bad effects and this, we contend, is proof
12 to show wherein rested the difficulty to save the
13 situation. We firmly believe that the proper under-
14 standing of these fundamental circumstances is most
15 important in the execution of a fair trial.

16 I shall omit paragraph 85.

17 86. Witness TAKEDA, Hisashi, in his testimony¹
18 stated:

19 "The conclusion was that so long as we did
20 not capture the base of enemy operations near Chinchow,
21 we would find it difficult to preserve peace in our
22 district. . . and the Chinese troops which gathered in
23 the vicinity of the city reached 35,000 and the
24 number of volunteer bandits, detached forces, incited
25

1. Ex. No. 2405, par. 8, The Dispatch of Japanese Forces
to Chinchow, tr. 19,352.

by the Chinese forces reached from 50,000 to 60,000.

1 Disturbances plotted east of the Liao River gave direct
2 threats to the South Manchuria Railway and the bandits
3 along the Antung-Fengtien Railway appeared to be
4 cooperating. The destruction of railroad and stoppages
5 of traffic occurred in rapid succession. Though we
6 adopted the policy of localizing the affair, the
7 situation became so serious that we could not tolerate
8 it any longer. . . it was a pressing need to capture the
9 base of their operations. The (Kwantung) Army reported
10 the above situation to the central authorities of the
11 army."
12

13 Witness KAWABE, Torashiro, in his testimony¹
14 stated:

15 ". . . the Commander (of the Kwantung Army)
16 and his staff officers were extremely concerned by
17 the repeated violence along the South Manchuria Rail-
18 way by bandits who maintained their base at Chinchow.
19 I heard that the Japanese Government was negotiating
20 with the Nanking Government and also with the Adminis-
21 trative Authority of Chang Hsueh-liang through diplomatic
22 channels at Peiping to have the Military Government at
23 Chinchow withdraw to within the Great Wall, but did
24 not see the result of this revealed.
25

1. Ex. No. 2408, Tr. 19,420-19,421.

1 "Furthermore, since the middle of December,
2 the regular army (TN: of Chang Hsueh-liang) came out
3 of the vicinity of Chinchow to a place near the South
4 Manchuria Railway and took a course of action in
5 cooperation with the bandits."

6 87. ARAKI, in paragraph 4 in his affidavit¹
7 stated, with respect to the measures taken by the
8 government and the central military authorities at
9 that time, as follows:

10 "... the Japanese Government had to resort
11 to arms to wipe out the stronghold of the bandits and
12 the lawless mobs in order to save the Japanese nationals
13 from danger. I communicated this decision of the
14 government to the General Staff. In the meantime,
15 the government made a proclamation on the 27th to
16 clarify the situation and explained to the world the
17 difficulties that Japan was confronted with."

18 And he went on to clarify that the operational
19 action was conducted by the Army General Staff. He
20 further made it clear that no positive measures were
21 taken in spite of the casualties suffered by the
22 isolated KOGA Cavalry Regiment and other damages
23 caused by the atrocious activities of bandits in
24 later days. Besides the above, several newspapers
25

1. Ex. No. 3161, Tr. 28,132.

1 in these days reported the circumstances of this immi-
2 nent danger. The foregoing testimony makes it clear
3 that the general condition was such that Japan was
4 compelled to take adequate measures for the sake of her
5 own self-defense, and Witness MINAMI, in his testimony
6 stated that the dispatch of troops to Chinchow was due
7 to the changed condition.

8 88. This dispatch of troops was a lawful
9 measure based upon the Japanese reservation concerning
10 Japan's right of self-defense when the Japanese dele-
11 gate stated at the League Council on December 10, 1931,
12 that his acceptance "was based on the understanding
13 that this paragraph (No. 2) was not intended to preclude
14 the Japanese forces from taking such action as might
15 be necessary to provide directly for the protection
16 of the lives and property of Japanese subjects against
17 the activity of bandits and lawless elements rampant
18 in various parts of Manchuria."

19 89. It is further our contention that this
20 action did not violate the guarantee to the United
21 States of America.

22 It is definitely clear that a stipulation was
23 attached to the guarantee given to Mr. Forbes, United
24 States Ambassador (during the WAKATSUKI Cabinet) on
25 November 24, 1931, as follows:

1 "The clause in the draft prohibiting hosti-
2 lities he agrees to, but is insistent that Japanese
3 citizens must be protected by Japanese troops against
4 marauding bandits which infest the country."¹

5 It is stated already in the foregoing that
6 the pacification of Chinchow did not go one step
7 beyond this condition.

8 90. The pacification of Chinchow was a prob-
9 lem which had been under discussion for some time prior
10 to the assumption by ARAKI to the office of Minister
11 of War and was the result of the unavoidable self-
12 defensive action caused by the imminent danger to
13 Japan's self-existence as stated above. At that time,
14 Chang Hsueh-liang was playing on Japan on the con-
15 venient pretext of diplomatic negotiations on one
16 hand and was in the practical sense menacing the
17 Japanese troops and residents through bandits on the
18 other hand. At the same time he was trying his best
19 in his propaganda to utilize third parties. The INUKAI
20 Cabinet had to deal with this entangled Chinchow
21 problem which had already been started. Under such
22 circumstances, any cabinet, even the WAKATSUKI Cabinet,
23 was sure to be obliged either to adopt the same
24 measures if things were left as they had been at that
25 time or else there was no assurance that it would not

have brought about military actions on a grand scale
1 thus leading to the outbreak of a real war between
2 Japan and China. All the difficulties mentioned above
3 were dealt with by the INUKAI Cabinet so that not a
4 drop of blood was shed. After that, for as long a
5 period as one year after the establishment of Manchukuo,
6 Jehol, which was the very base for Chang Hsueh-liang
7 to carry out his disturbances against Manchuria, was
8 left untouched and this was for the sole purpose of
9 permitting enough room for negotiations between Japan
10 and China. The INUKAI Cabinet which succeeded the
11 previous cabinet amidst internal disturbances was able
12 to suppress public opinion at home and was also able
13 to take such flexible measures as mentioned above in
14 spite of the fact that the nation had enough real power
15 and the support of the general public so that if she
16 really desired she was in a position to have her own
17 way in everything. All the above goes to prove suffi-
18 ciently that it was due to the peaceful intentions
19 entertained by ARAKI in the INUKAI Cabinet to bring
20 the armed disturbances to a speedy and yet satisfactory
21 end.
22

23 The prosecution alleges that the prompt with-
24 drawal on the part of the bandits and Chang Hsueh-liang's
25 troops upon Japan's resolution to relieve Chinchow

showed that China had no intention of resistance. In fact, this conclusion is far from the truth. It was a well-known conventionality of the Chinese people that where once an attitude of tolerance beyond a certain limit was taken, they were apt to take advantage in it causing disastrous results. Japan had a bitter experience of this nature in Nanking in 1927, where Japanese Army and Navy troops were disarmed and the members of the Japanese Consulate and Japanese nationals suffered casualties. Also at the time of the Su-Pingwen Rebellion, the Japanese nationals in Manchuria would have suffered serious calamities if there was a slight delay on the part of Japan in coping with the situation. These will serve to show how mistaken the prosecution's allegation is.

91. As explained above, the pacification of Chinchow was really an unavoidable step taken by the INUKAI Cabinet in order to cope with the aggravated situation after all diplomatic measures failed. This, we contend, proves that ARAKI executed the policy of the government in pursuance of his official duties and at the same time, measured the military action with due consideration to bring the armed disturbances to an end in the then near future.

IV. Dispatch of Troops to Shanghai.

1 92. The handling of the first Shanghai
2 Incident is the best example which reveals the character
3 istic methods peculiar to War Minister ARAKI. The
4 beginning of the first Shanghai Incident related to
5 the action of the Japanese Navy, but as it took place
6 after ARAKI assumed the office of War Minister, he
7 was able, therefore, to take whatever steps he desired
8 to settle the dispute. That was why it terminated not
9 only in a non-expansion of the incident but also
10 clearly depicts the reason why he was able to prevent
11 further disputes by evacuating the whole of the armed
12 forces. This was also one of his actions which will
13 enable one to determine what his intention in the
14 settlement of the Manchurian Incident was to bring
15 the armed disturbances to an end.
16

17 93. Concerning this incident, he took no
18 interest in the beginning and left the matter entirely
19 to the navy and the Foreign Office. The HARADA
20 Memoirs¹ (Series No. 65) also refers to this matter.

21 Witness Powell stated about the strengthening
22 of Japanese Navy and its bombing, this was entirely
23 a navy affair, of which ARAKI knew nothing, and even
24 the navy did not make report to the cabinet.
25

1. Ex. No. 3768, Tr. 37,618.

1 However, the danger which confronted the
2 Japanese residents and the navy reached such a state
3 of affairs that it could not be left to take its own
4 course and the cabinet at last decided upon dispatching
5 troops. It was decided by consultation between the
6 War Minister and the Chief of the Army General Staff
7 that a minimum number of troops would be dispatched,
8 as the result of which the first mixed brigade in its
9 peace footing was sent out. The situation then was so
10 tense that the troops were transported by destroyers.
11 This was followed by the 9th Division in its peace
12 footing and the total strength of troops sent amounted
13 to some 10,000 in all. The enemy strength of the
14 19th Route Army at that time was estimated at 50,000.
15 From the viewpoint of the fundamental principle of
16 operations, practical sense demands a dispatch of
17 troops equal to the strength of the enemy. However,
18 it was considered that the way to settle the case
19 peacefully would be to show, to the fullest extent,
20 Japan's sincerity to avoid war. This was the reason
21 why the troops of the above strength were dispatched
22 and the commander of the army group, in accordance
23 with the wishes both of the War Minister and the Chief
24 of the Army General Staff, issued a statement concerning
25

1 a peaceful settlement of the incident.¹ ARAKI's
2 attitude and true intention in handling not only the
3 Shanghai Incident but the entire incident may be seen
4 in the foregoing statement and the reason for the
5 unavoidable dispatch of troops is clearly stated in
6 the statement of the Japanese Government.²

7 94. At the time when the 9th Division was
8 first to be sent, ARAKI, as stated above, expressed his
9 desire to Divisional Commander UEDA to avoid hostili-
10 ties as far as possible and to achieve the object
11 through peaceful means. Divisional Commander UEDA
12 addressed the 19th Route Army based upon this very
13 desire of the Minister of War.³ However, this peaceful
14 generosity on the part of ARAKI was taken advantage
15 of by the 19th Route Army, which made complete prepa-
16 rations for war during three days prior to the time
17 limit for evacuation. As a result of this, the UEDA
18 Division had to fight. Although ARAKI's generosity
19 was subjected to ridicule by some Japanese and foreigners
20 he took further measures to cope with the situation.

21
22 95. As the third step, ARAKI upon consulta-
23 tion with the Chief of the Army General Staff, gave
24 the post of Chief of Operations Section to Colonel

- 25
1. Ex. Nos. 3163-A and B, Tr. 28,257, Tr. 28,271.
2. Ex. No. 2417, Tr. 19,563.
3. Ex. No. 3163.

1 OBATA, Binshiro, and requested him to draft an opera-
2 tion plan which would enable the Japanese Army to accom-
3 plish the object of reinforcing their forces in
4 Shanghai with the minimum casualties to be inflicted
5 upon the Chinese. As a result of this, the reinforce-
6 ment division landed at Chi-liao-kou on March 1, and
7 the statement of Army Commander SHIRAKAWA¹ was issued
8 on that very day in accordance with the wishes of
9 War Minister ARAKI. The 19th Route Army immediately
10 retreated as was demanded in the UEDA statement. Their
11 object having been achieved, the expeditionary forces
12 ordered the cessation of hostilities on March 3, two
13 days after their landing. The Chinese Army also
14 issued a similar order the following day. Thus, the
15 object was attained successfully with practically no
16 bloodshed this time in only three days after the van-
17 guard of the reinforcements landed.²

19 96. The expeditionary forces which ceased
20 hostilities retreated voluntarily to a line in the
21 rear, toward the end of March, and one division and a
22 half were recalled to Japan. After that, Japan wel-
23 comed the assistance and cooperation of the committee
24 composed of the representatives of Britain, America,
25

1. Ex. No. 3163-B, Tr. 28,271.

2. Testimony of MASAKI, Ex. No. 3168, Tr. 28,461.
Diet speech by War Minister ARAKI, Ex. No. 3167,
Tr. 28,443.

1 France and Italy, and a truce agreement was formally
2 concluded on May 5. This welcome by ARAKI of the par-
3 ticipation of the International Committee was ARAKI's
4 fourth method, which we contend shows how ARAKI
5 respected the international relations in Shanghai in
6 view of the international character of the city.

7 97. After the conclusion of the truce agree-
8 ment, the right to station a part of the forces for the
9 time being was recognized in view of the general situa-
10 tion and by virtue of Article 3 of the truce agree-
11 ment (Appendix 2). However, in view of the international
12 character of the city of Shanghai and for the purpose
13 of respecting the sovereignty of China, War Minister
14 ARAKI resolutely carried out general evacuation before
15 the end of May. In connection with this, ARAKI was
16 blamed by some influential Japanese who said that it
17 was quite improper of him to carry out general eva-
18 cuation disregarding the insecurity in Shanghai; at
19 the same time, the Chinese Army made propaganda of
20 this to say, contrary to fact, that the Japanese took
21 to their heels because they lost a war, which exercised,
22 as already referred to above, considerable influence
23 upon the situation in Manchuria.¹ Influential Chinese
24 people declared that the measures adopted by Japan in
25 1. Lytton Report, Chap. 5, p. 175.

the settlement of the Shanghai Incident were based upon
1 sincerity and, contrary to their expectation, that Japan
2 might launch upon unprecedented operations. They further
3 declared it was worthy of note to find ARAKI, MASAKI
4 and OBATA in the Japanese Army. The foregoing is the
5 gist of the report appearing in the official organ of
6 the Blue Shirts Society at that time.¹

98. Witness J. B. Powell testified and made
8 it clear in his cross-examination by Counsel Furness
9 on August 6, 1946, that the first Shanghai Incident was
10 brought about by the attack by the Chinese Army on the
11 Japanese landing marines when the latter intended to
12 take their positions in accordance with the martial law
13 proclaimed for the purpose of maintaining peace and
14 order by the Municipal Council of Shanghai, and that,
15 after the conclusion of the truce agreement, the
16 Japanese Army remained in the stipulated area in per-
17 fect good military order,² also testified to by Vice-
18 Admiral SANEJIMA, Tomoshige,³ and Captain KITAURA,
19 Toyoo.⁴

99. The prosecution included one item in its
22 counts in the Indictment concerning the progress of

- 23
24 1. ARAKI Affidavit, Ex. No. 3161, par. 5.
25 2. Tr. 3260.
3. Ex. 2420, Tr. 19,578.
4. Ex. 2421, Tr. 19,586.

the Shanghai Incident and charged that ARAKI agreed with the government to dispatch troops and later reinforced one division; however, so far as ARAKI himself is concerned in this matter, the charge cannot but be declared to be exceedingly impertinent. We shall, however, set forth hereunder a few facts in order to prove ARAKI's state of mind with respect to the situation concerning China.

During a period when the national opinion was extremely complicated, it was most difficult to execute the over-all withdrawal of troops. We shall not, for the moment, question the propriety of the ability with which ARAKI handled the troops; however, because ARAKI placed the first and foremost idea in the restoration of peace and the future cooperation between Japan and China he overcame the extreme and popular opinion and succeeded in carrying out this difficult task of the aforementioned withdrawal.

The measures taken by ARAKI in handling the Shanghai Incident, we hope now are clear. Not until the ardent desire of the government and the navy was expressed to him did ARAKI reluctantly consent to dispatch troops in the first place, and then only for the purpose of protecting the Japanese residents there. And then in spite of prevailing public opinion

of China provides so many examples."

1 Under the circumstances mentioned above, one
2 Japanese and three Koreans were murdered beside one
3 Japanese flight officer, which forced the Japanese
4 Government to take proper measures for the protection
5 of the Japanese residents. Due to the fact that troops
6 were once before dispatched for the purpose of rescue
7 but were recalled immediately, the situation in that
8 area was further aggravated as was experienced in the
9 case of Chinchow. We call the particular attention
10 of the Tribunal to the latter part of the statement
11 just read in the report, to-wit:
12

13 "Fighting between two irregular Chinese troops
14 would have resulted in the retreat on the town of a
15 defeated army, the horrors of which the recent history
16 of China provides so many examples."
17

18 101. With respect to the circumstances under
19 which troops were dispatched to Harbin, Witness TAKEDA,
20 Hisashi, then the Chief of Staff of the Kwantung Army,
21 clearly testified in his affidavit¹ under the heading,
22 "The dispatch of troops to Harbin," that the Kwantung
23 Army at first maintained an attitude of prudence, but
24 it decided to dispatch troops, now that a few Japanese
25 residents and a flight officer were murdered, in order

1. Ex. No. 2405, Tr. 19,354, par. 9.

completely withdraw them as quickly as possible.

After this, more than four years elapsed before the outbreak of the China Incident and the relations between Japan and China were calm and cordial and Japan was able to recover her good reputation among the family of nations. This reveals ARAKI's true intentions and state of mind relative to his peacefulness and his attitude toward not only China but other nations of the world.

We therefore state that the charge made by the prosecution is utterly groundless and declares circumstances which are entirely contrary to facts.

V. Dispatch of Troops to Harbin.

100. The Lytton Report states as follows:

"General Hsi Hsia advanced with his troops as far as Shuang-cheng. . .but when it came to serious fighting . . . the advance was at once checked (by the forces under Generals Ting Chao and Li Tu). The situation thus created was felt by the Japanese to be full of danger for the large Japanese and Korean colonies at Harbin. Fighting between two more or less irregular Chinese forces in the immediate neighborhood would have resulted in the retreat on the town of a defeated army, the horrors of which the recent history

1. p. 158.

of China provides so many examples."

1 Under the circumstances mentioned above, one
2 Japanese and three Koreans were murdered beside one
3 Japanese flight officer, which forced the Japanese
4 Government to take proper measures for the protection
5 of the Japanese residents. Due to the fact that troops
6 were once before dispatched for the purpose of rescue
7 but were recalled immediately, the situation in that
8 area was further aggravated as was experienced in the
9 case of Chinchow. We call the particular attention
10 of the Tribunal to the latter part of the statement
11 just read in the report, to-wit:
12

13 "Fighting between two irregular Chinese troops
14 would have resulted in the retreat on the town of a
15 defeated army, the horrors of which the recent history
16 of China provides so many examples."
17

18 101. With respect to the circumstances under
19 which troops were dispatched to Harbin, Witness TAKEDA,
20 Hisashi, then the Chief of Staff of the Kwantung Army,
21 clearly testified in his affidavit¹ under the heading,
22 "The dispatch of troops to Harbin," that the Kwantung
23 Army at first maintained an attitude of prudence, but
24 it decided to dispatch troops, now that a few Japanese
25 residents and a flight officer were murdered, in order

1. Ex. No. 2405, Tr. 19,354, par. 9.

1 to protect the other 5,500 Japanese residents there.
2 We shall not requote TAKEDA here as it has already
3 been referred to in the foregoing.

4 102. Witness KAWABE also gives similar
5 testimony in his affidavit.¹

6 103. ARAKI states in his affidavit² as follows:

7 "The government had taken a cautious attitude
8 toward this district (and wished for a peaceful
9 settlement of the case), but as the situation became
10 so serious the government considered it necessary to
11 take measures to restore law and order in that district
12 to protect the Japanese residents."

13 104. Reply by Foreign Minister YOSHIZAWA at
14 the Privy Council Meeting (January 30):³

15 "As to the dispatch of troops to Harbin, this,
16 as ARAKI has stated, was done by the Kwantung Army
17 as a measure to protect the lives and properties of
18 the Japanese in North Manchuria, who and which were
19 endangered by bandits."
20

21 As stated above, the dispatch of troops to
22 Harbin was exactly the same step taken by the Japanese
23 Government as the powers wished to have adopted to
24 protect their own nationals in various parts of China
25

1. Ex. No. 2408, Tr. 19,420.

2. Ex. No. 3161.

3. Ex. No. 3174, Tr. 28,580.

1 who were then exposed to grave danger. The reason why
2 it was necessary to take measures for the protection
3 of Japanese residents on the spot was, as is stated in
4 the latter part of the report of the Lytton Commission
5 was due to the consideration of the disorder and the
6 subsequent sad plight which would easily be brought
7 about as the result of the clash between the Anti-Kirin
8 and Kirin Chinese regular armies. Japan had a bitter
9 experience with respect to cases of malicious murder
10 by the Chinese during 1928 when the second dispatch
11 of troops to Tsinan was being carried out. As Foreign
12 Minister YOSHIZAWA stated above, the measures were
13 unavoidable under the prevailing disorderly conditions
14 in China at that time, which were well understood by
15 the world powers and were not in violation of inter-
16 national treaties.¹
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1. ARAKI Affidavit, Ex. No. 3161.

VI. Independence of Manchukuo.

105. The Lytton Report in Chapter VI states the circumstances of the independence of Manchukuo based upon the materials collected by Lord Lytton and his commission at that time. The fact that an atmosphere of movements for the Independence of Manchuria had existed prior to the Manchurian Incident was testified to, beside the above materials by various pieces of evidence introduced before this Tribunal such as KASAGI, KANAI, Witness KATAKURA, ITAGAKI¹, affidavit, and the memorandum by HONJO, Chapter 3. This atmosphere made a rapid progress after the outbreak of the Manchurian Incident and the Committee of Peace and Order was established on September 24th, while on the 26th declarations contemplating the independence of Mukden Province and of the Three Eastern Provinces were issued. The observations of the Japanese Government addressed to the League of Nations also touched upon this matter (The Lytton Report and this observation is an official document of the Japanese Government). At the time of the formation of the INUKAI Cabinet, the general idea for the independence seemed to have already been in the progress. No definite report was received, it seems, by the Central

1. Ex. No. 2043.

1 Government in this regard as it was treated at that
2 time as a local affair. In this respect, the army
3 authorities in the WAKATSUKI Cabinet sent instructions
4 on September 26 to those concerned "not to engage
5 themselves in those reported movements," which fact
6 was testified to by WAKATSUKI, SHIDEMARA and MINAMI.

7 At the time when the INUKAI Cabinet was
8 formed, i. e., when ARAKI took the office of War
9 Minister, this movement for independence seemed to
10 have already been progressing to a considerable ex-
11 tent among the influential Chinese, but the INUKAI
12 Cabinet naturally adopted the same policy in this
13 problem as the preceding cabinet and it never became
14 an important question before the cabinet meeting
15 immediately following its formation. It was in the
16 early part of January, 1932, that ARAKI came to know
17 of this matter definitely from Colonel ITAGAKI who
18 came up to the capital in order to make a direct
19 report to the War Minister. (It was about three weeks
20 after ARAKI became War Minister.) (Testimony by
21 ITAGAKI and ARAKI affidavit.) Therefore, it is
22 clear that ARAKI had no knowledge of this matter
23 prior to that period and consequently entertained no
24 interest which would enable him to form an opinion
25 for or against the matter. He was devoting himself

1 entirely to the means by which to restore peace and
2 order and to bring the hostilities to an end.

3 Witness INUKAI seems to have mixed up the
4 establishment of Manchukuo and the question of her
5 recognition, so that the testimony in his affidavit
6 in this regard is inconsistent and is not clear.
7 Stating that it was "to oppose the recognition of
8 the puppet state of Manchukuo," he testified that
9 Premier INUKAI sent a messenger to Chiang Kai-shek
10 in the middle of December, 1931, at which time, how-
11 ever, Manchukuo was not yet established. Manchukuo
12 was not founded yet at that time, therefore, conceding
13 a messenger was really dispatched as he claims, he
14 could not have had anything to do with the question of
15 the puppet state still less with the question of
16 recognition. We are inclined to assume that this
17 matter of dispatching a messenger was motivated from
18 a desire peculiar to Premier INUKAI in order to satisfy
19 his own self-confidence that he was an expert in the
20 affairs of China and also to distinguish himself
21 because of his favorite secret activities. With
22 regard to this matter, therefore, ARAKI knew nothing
23 about it as it was testified to by Witness INUKAI.
24 The transfer of Colonel SHIGETO, which was alleged
25 to have been connected with this matter, was due to

1 the cleaning up of the army personnel and was not due
2 to the alleged interference in the establishment of
3 Manchukuo; further, he was connected with the March
4 Incident, all of these facts were established by the
5 testimony of FUJITA, Isamu. Therefore, prior to
6 ARAKI's assumption of the office of War Minister, the
7 central authorities did not seem to know clearly
8 about the independence movement except as rumors,
9 but the following statements show clearly that it had
10 gained considerable progress at least among personages
11 of high standing in Manchuria as well as the fact that
12 ARAKI had absolutely no relations with this matter.
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106. Upon receiving a report from Colonel ITAGAKI of the views of Commander-in-Chief HONJO,¹ ARAKI came to be aware for the first time of the real situation on the spot, and it was his duty as War Minister to report the matter to Premier INUKAI. The prosecution contention that the fact that he made a report of these views to the Premier means ARAKI approved of them, because he could, if he so desired, refuse to report same, is not logically consistent. Moreover, the prosecution's argument is based upon ARAKI's incorrect interrogation taken in the Sugamo Prison.

It is naturally very difficult for the control army authorities to decide the propriety of such a question and the opinion of the Foreign Ministry must also be considered, it was but natural, therefore, that a report should be made to the Premier (who was holding the Portfolio of the Foreign Ministry concurrently at that time.) In this respect, ARAKI expressed no views but indicated simply that he would devote himself entirely in the maintenance of peace and order. The report made by ITAGAKI, in connection with this matter, of the views of Commander-in-Chief

1. ITAGAKI Affidavit, Paragraph 1-(10).

HONJO is contained in the Memorandum by HONJO¹ as well as in ITAGAKI's Affidavit.² ARAKI, after having heard the views, was following the proper procedure when he reported the matter to the Premier, as stated above, in order to hear the opinion of the Premier and concurrently Foreign Minister on this matter on behalf of the Army whose principal duty it was to maintain peace and order. The circumstances in this respect are clearly stated in ARAKI's Affidavit.³

Witness KATAKURA made it clear that ARAKI, upon receiving a report from Colonel ITAGAKI, did not at once approve of the views. In the direct examination of ITAGAKI he denied the testimony of Witness TANAKA, Ryukichi, who stated that he had heard from ITAGAKI that ARAKI had approved of them. TANAKA's testimony in this regard is incorrect.

I shall omit down to the end of the next quotation.

Again, Foreign Minister YOSHIZAWA stated at the Privy Council Meeting, January 30, 1932, "this matter (of a new government in Manchuria) originated among the Chinese themselves in Manchuria."⁴

1. Ex. No. 2043: The establishment of Manchukuo and thereafter, Para. 3)
2. Ex. No. 3316
3. Ex. No. 3161, para. 8
4. Ex. No. 3174, T. 28,580

1 This fact can clearly be proved by the
2 Independence Declaration of the new Manchu-Mongolian
3 State, and the Proclamation on the Establishment of
4 Manchukuo.¹

5 I shall now omit paragraph 110 entirely.

6 In the memorandum by HONJO, Chapter 3,
7 "Establishment of Manchukuo and afterwards",² it is
8 stated as follows:

9 "The Kwantung Army rose only in self-defense
10 and took action only in self-defense. At first we
11 did not, therefore, consider any aspect of the
12 problem of Manchuria's future status...How could we
13 have expected the safety of our resident nationals'
14 lives and property and of Japanese interests but by
15 the stabilization of life and the public peace? For
16 this reason I supported not only the district self-
17 governing committee which was voluntarily organized
18 by Yuan Ching-kai and others in Mukden within ten days
19 after the outbreak of the incident, but also the self-
20 governing committee of various localities thus gave
21 impetus to self-government...

22
23 "Nevertheless, as these organizations were
24 only makeshift and temporary, some permanent organization

- 25
1. Ex. No. 2429
2. Ex. 2043, T. 19,264

1 had to be established. Indeed, a cry for this arose
2 promptly and suddenly among the self-governing
3 direction department, district self-governing committee
4 circles, and military and civil notables and prominent
5 men in all quarters who know our activities well."

6 Thus, it is clear that the founding of the
7 nation was not the scheme of Japan to establish a
8 puppet regime.

9 112. Furthermore, the studies made by the
10 Japanese Foreign Office which were accepted by the
11 Japanese Government as its views and contained in the
12 Lytton Report - -¹

13 I shall now omit the next quotation.

14 Inasmuch as the views were accepted by the
15 Government to be correct, ARAKI, as Minister of War,
16 had only to rely upon the studies carried out by
17 experts on the matter. However, as mentioned already
18 and as was reported at the time in newspapers, ARAKI
19 was exceedingly cautious regarding this matter when
20 he had an interview with Prince SAIONJI on March 10th.
21 His remarks to the Prince were in substance to the
22 effect that although Premier INUKAI had already declared
23 that the recognition was inevitable, ARAKI was of the
24 opinion that no rash actions should be taken to extend
25 1. p. 265.

1 ~~recognition at once, but that fullest studies of the~~
2 question be made and at the same time watch carefully
3 the development of that country. This fact clearly
4 shows ARAKI's attitude at that time and disproves the
5 contention of the prosecution in this respect.

6 Further, in order to corroborate the foregoing
7 fact, we quote hereunder the pertinent portion from
8 the Lytton Report.¹

9 113. "The justification in this case has
10 been that all the military operations have been
11 legitimate acts of self-defense, the right of which
12 is implicit in all the multilateral treaties mentioned
13 above, and was not taken away by any of the resolutions
14 of the Council of the League. Further, the administration
15 which has been substituted for that of China in the
16 Three Provinces is justified on the grounds that its
17 establishment was the act of the local population who,
18 by a spontaneous assertion of their independence, have
19 severed all connections with China and established
20 their own Government. Such a genuine independence
21 movement, it is claimed, is not prohibited by any
22 international treaty or by any of the resolutions of
23 the Council of the League of Nations, and the fact
24 of its having taken place has profoundly modified
25 1. p. 265.

1 the application of the Nine Power Treaty and entirely
2 altered the whole character of the problem being
3 investigated by the League."

4 I shall now omit paragraph 114.

5 115. The prosecution, quoting from the
6 HARADA Memoirs, questioned ARAKI on the opinion expressed
7 by Dr. TACHI and Dr. Baty, advisor to the Japanese
8 Foreign Office; and it might have been quite possible
9 that the Foreign Minister took into consideration that
10 opinion in his studies on the question because the
11 former was a non-official of the Foreign Ministry.
12 At any rate, the decision was that it did not violate
13 the provisions of the treaty.

14 We find quite a number of international
15 jurists expressing their opinions in this respect.

16 I shall omit paragraph 116.

17 VII. Recognition of Manchukuo.

18 117. The prosecution contends that the
19 establishment of Manchukuo was a part of the practical
20 aggression upon Manchuria by Japan, who, by making
21 it a puppet state, came to control Manchukuo and it
22 relies entirely upon the testimony of ex-Emperor Pu-
23 Yi. The beginning of Manchukuo was started by the
24 ardent desire which had existed for a number of years
25 and the initiative of influential people in Manchuria,

1 who, through the North-Eastern Administrative Council,
2 of which they were members, declared independence and,
3 with popular support, received Mr. Pu-Yi as the
4 Regent. Mr. Pu-Yi as well as those around him had
5 wished for independence. These people developed their
6 movement into independence by availing themselves
7 of the position taken right after the Incident. The
8 Kwantung Army, which aimed mainly at self-defensive
9 activities from the military point of view engaged
10 exclusively in maintaining peace and order leaving
11 administration to local people without enforcing
12 military administration. The only evidence on which
13 the prosecution relied and tendered was the testimony
14 of Pu-Yi and a few documents which it obtained from
15 the files of the Japanese Foreign Office and the War
16 Ministry which were ill-arranged both in order and
17 contents.¹ The credibility of the testimony of Pu-Yi
18 was broken down in his cross-examination we contend.
19 Considering the present personal condition of Pu-Yi,
20 it will easily be understood to what extent the basis
21 of his testimony may have influenced his state of mind
22 because of his present circumstances, which fact must
23 also be taken into consideration in weighing his
24 testimony. On the other hand, Mr. Woodhead's testimony
25 1. Ex. No. 222 and a few documents immediately following.

1 established facts entirely contrary to those testified to
2 by Pu-Yi.¹ It was made clear by this testimony that the
3 state was not a puppet at least at the time when Manchu-
4 kuo was established as well as when it was recognized by
5 Japan.

6 118. As far as the Japanese Government was con-
7 cerned, now that Manchukuo had actually been established,
8 she wanted to have it guarantee the self-existence and
9 self-defense of Japan which had been endangered in the
10 past due to the misgovernment and extortion of the Chang
11 family in Manchuria.

12 119. The Lytton Report states as follows:²
13 "It must be apparent to every reader of the preceding
14 chapter that the issues involved in this conflict are not
15 as simple as they are often represented to be. They are,
16 on the contrary, exceedingly complicated, and only an
17 intimate knowledge of all the facts, as well as of their
18 historical background, should entitle anyone to express
19 a definite opinion upon the situation. This is not a
20 case in which one country has declared war on another
21 country without previously exhausting the opportunities
22 for conciliation provided in the Covenant of the League
23 of nations. Neither is it a simple case of the
24

25 (1. Ex. 3158.
2. p. 263-4.)

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24

25 (1. Ex. 3158.
2. p. 263-4.)

violation of the frontier of one country by the armed
1 forces of a neighboring country, because in Manchuria
2 there are many features without an exact parallel in
3 other parts of the world."

4 It is always difficult to know the real
5 truth by way of only superficial arguments on
6 international law, simple documents or opinions of
7 individuals.

8 With respect to the position of the Sovereignty
9 of Manchuria, we find in the Lytton Report that

10 "China was disturbed by large bandit forces
11 which frequently interfered with communications;
12 when the Washington Conference was still in session,
13 there existed no fewer than three Governments professing
14 to be independent, not to mention the virtually
15 autonomous status of a number of provinces or parts
16 of provinces; the Central Government's authority is
17 still weak, is not, at least openly, repudiated; and
18 the independence of Manchuria was declared by Marshal
19 Chang Tso-lin."¹

20 Concerning the restoration of the status quo
21 ante of the Manchurian Incident, it is out of the
22 question according to the Lytton Report which goes
23 on to say as follows:
24

25 1. p. 27

1 "It must be clear from everything that we
2 have already said that a mere restoration of the status
3 quo ante would be no solution. Since the present
4 conflict arose out of the conditions prevailing before
5 last September, to restore these conditions would
6 merely be to invite a repetition of the trouble. It
7 would be to treat the whole question theoretically
8 and to leave out of account the realities of the
9 situation."¹

10 "As already stated, there is no question
11 of returning to the conditions before September, 1931.
12 A satisfactory regime for the future might be evolved
13 out of the present one without any violent change."²

14 Further, under Paragraph 4 of the Conditions
15 of settlement, it states:

16 "The rights and interests of Japan in
17 Manchuria are facts which cannot be ignored, and any
18 solution which failed to recognize them and to take
19 into account also the historical associations of Japan
20 with that country would not be satisfactory."³

21 Such being the fact, it was admitted that
22 there was no question of Manchuria returning during
23 the tenure of the SAITO and INUKAI Cabinets, to the
24

- 25 1. p. 266
2. p. 271
3. p. 272

1 conditions before the Incident for the sake of future
2 peace of Japan and Manchuria. It was but natural
3 that everybody thought it proper, as it was desired
4 by the people in Manchuria as well as Mr. Pu-Yi at
5 that time, to promote the growth of Manchukuo which
6 had already come into being. The most deliberate studies
7 carried out by the Japanese Foreign Office at that
8 time finally reached the conclusion, as stated in
9 the Lytton Report as well as in Japan's observations
10 to the League of Nations, that the establishment of
11 Manchukuo was the result of self-disintegration within
12 a nation and does not constitute any violation whatever
13 of the stipulations of treaties and the Japanese
14 Government came to make its mind to accord recognition
15 to the New State inasmuch as her foundation had already
16 been laid and there was good prospects for her future
17 development. However, further studies of this question
18 had been continued until the final announcement.

19 THE PRESIDENT: We will recess for fifteen
20 minutes.

21 (Whereupon, at 1045, a recess was
22 taken until 1100, after which the proceed-
23 ings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. McManus.

4 MR. McMANUS: 120. During that time, a
5 decision that Manchukuo should be recognized was
6 adopted by the House of Representatives in 1932.
7 The awkward position in which the Kwantung Army
8 was placed with respect to the New Government and
9 the task of maintaining peace and order is clearly
10 set forth in the note left behind by HONJO and
11 KATAKURA's testimony.

12 121. These studies by the Foreign Office
13 and the reasons and contents of the approval by the
14 Government of them were stated in detail by Foreign
15 Minister UCHIDA in his replies to the deliberations
16 at a meeting of the Privy Council on September 13,¹
17 the gist of which is as follows:

18 These quotes are all contained in exhibit
19 241. Although they might appear to be from different
20 documents, they are all contained in this one exhibit.
21 I quote:

22 "The action of September 18 was nothing but
23 the exercise of our right of self-defense. It is
24 true, however, that this action was taken advantage
25 1. Ex. 241.

1 of by the people of Manchukuo for creating a new
2 state, but . . . recognizing (the creation of the
3 new state was entirely based on) the free will of
4 the people of Manchukuo. The Nine Power Pact provides
5 that the Chinese territorial integrity shall be
6 respected, but it makes no provision at all for a
7 case where a part of China becomes independent as the
8 result of China's own disintegration. Of course, in
9 this respect, various views are held in the United
10 States and other countries, but these are their own
11 views. We should go ahead with the view given above.
12 In fact, when Ambassador DEBUCHI recently approached
13 the American Government authorities and informally
14 asked if they would protest in case Japan should
15 recognize Manchukuo, they replied that they had not
16 the slightest intention of making a protest or con-
17 voking a Nine Power conference, inasmuch as there
18 was no hope of such a conference reaching any con-
19 clusion. Besides, the convocation of Nine Power
20 conference will be opposed by some European countries.

21
22 "The powers are concerned with the open
23 door principle, principle of equal opportunity, etc.,
24 but we do not see any conflict between the documents
25 of this bill and these principles."

Further, Privy Councillor ISHII, an

1 authority on Japan's foreign diplomacy, stated in
2 substance as follows at the same meeting of the Privy
3 Council:

4 " . . . the independence of Manchukuo was
5 due to the disintegration of China and that the
6 territorial integrity of the Republic of China was
7 broken by none other than Manchukuo. This will
8 nullify the argument that Japan violated the Nine
9 Power Pact. Now that Japan has concluded an alliance
10 with new Manchukuo for joint national defense, I
11 believe there will be no room for opposing the
12 stationing of Japanese troops in Manchuria, thus
13 making the League's past resolution a dead letter.

14 "Now, supposing that the Lytton's Inquiry
15 Commission recognized China's sovereignty over
16 Manchuria and recommended that China allow autonomy
17 to Manchukuo, and supposing the League adopted this
18 recommendation, Japan need not comment on it. It is
19 for Manchukuo herself to assert that an independent
20 state should not be placed under the sovereignty of
21 any other country. At any rate, in consequence of the
22 independence of Manchukuo, it has become unnecessary
23 for the League of Nations to deliberate on the Man-
24 churian question under Article XV of the League's
25 covenant. It was rather strange that the Manchurian

1 and the Mongolian races had started no independence
2 movement up to now. . . and it will not be difficult
3 to make them (Lord Lytton's party) understand the
4 creation of Manchukuo as well as the problem of
5 racial self-determination."

6 The annexed documents to the Protocol
7 between Japan and Manchukuo contain the agreements
8 stipulated in the following letters which were con-
9 firmed and made official. These letters were exchanged
10 at an early period of the establishment of Manchukuo
11 at the request, it must be noted, of the Regent:

12 122. A letter addressed to HONJO, Commander
13 of the Kwantung Army, from Regent Pu-Yi of Manchukuo
14 under date of March 10, 1932, and

15 A letter in reply addressed to Regent Pu-Yi
16 of Manchukuo from the said Commander HONJO under date
17 of March 12, 1932.

18 123. Witness Woodhead, in his affidavit¹
19 states the impressions he received at the time when
20 he had an interview with Emperor Pu-Yi in September,
21 1932, and thereafter, concerning Mr. Pu-Yi's adminis-
22 trative policy as follows:

23 1. "In October 1930 at a private lunch with
24 the Emperor in Tientsin, I had remarked that perhaps
25 1. Ex. 3158.

next time we met he might not be so accessible. "You see," he observed, "that your prophecy has been fulfilled."

2. "To the question whether he was really happy in his present position, he replied with emphasis that he was."

3. "I then remarked that the general impression that prevailed in Shanghai and indeed throughout China was that he had been coerced into his present position, and that he was not a free agent. From this report he emphatically dissented." (Thus, it was made clear that this rumor at that time was quite groundless.)

4. Ambition of the Regent.

"He had, he maintained, been actuated by a double motive in accepting the office of the Chief Executive. First, on account of political reasons. When the Manchu Dynasty abdicated it had been with the avowed intention of restoring the sovereignty to the people. Twenty years had elapsed since. . . The political power had passed not into the hands of the people, but of ambitious and grasping militarists (Chinese military cliques). There had been incessant civil war and disorder. China's relations with Foreign Powers had grown steadily worse. And the

1 pledge made in the abdication treaty that absolute
2 equality would be maintained between the five races
3 of China had been flagrantly violated.

4 "Secondly, he was actuated by personal
5 motives. Manchuria was his ancestral home. It was
6 only natural that he should feel greatly interested
7 in what was happening in this territory. Moreover,
8 every undertaking to the Manchu Dynasty contained in
9 the abdication agreement had been wantonly violated.
10 The allowance to be paid to him by the State had been
11 cancelled. His private property had been confiscated.
12 He had been treated with studied disrespect by the
13 Kuomintang. And the ancestral tombs had been
14 violated. . .

15 "It was only natural, therefore, that when
16 trouble occurred in Manchuria he should follow
17 developments with great attention and wonder whether
18 he was not destined to play some part in an attempt
19 to improve the condition of his ancestral provinces."
20

21 5. "At no time, in Tientsin, in the Leased
22 Territory, or in Manchuria, was he ever under any
23 restraint, nor was any coercion applied to him."

24 6. "I asked his views on the government
25 of Manchukuo, and he at once replied that he 'favored
the adoption of the Wang Tao Doctrine, based upon

1 the teachings of Confucious.' Competition and strife
2 between nations only led to war and intense suffering.
3 Confucious taught that governments should rule hon-
4 estly, observe the golden rule toward each other,
5 and work for humanity and peace. That crystallized
6 the Oriental spirit. That was the spirit in which
7 Manchukuo had issued its declaration of independence."

8 7. With respect to international problems:

9 "We should like to have the friendliest
10 relations with Great Britain and all the other Powers.
11 And we believe that we can contribute towards the
12 realization of world peace."

13 8. With respect to internal problems:

14 "Our domestic policy will aim at making it
15 possible to lead peaceful and happy lives. We shall
16 have no political parties in the new State. They
17 only make for disharmony." (Thus he anticipated the
18 struggle which might follow immediately upon the
19 establishment of the State and was carefully prepared
20 for it.)

21 9. Concerning bandits: ". . ., it was not
22 a new problem and required all to give all the
23 assistance in their power to eliminate this evil.
24 In this connection, he paid a very warm tribute to
25 General MUTO, the Chief of the Japanese delegation

to Manchukuo."

10. Trusting General MUTO, Commander in Chief of the Kwantung Army at that time:

"And he (Pu-Yi) felt confident that General MUTO would help to smooth over past and present difficulties."

Under the circumstances stated above, Pu-Yi made it clear that Manchukuo was not a puppet state.

The latter part of paragraph 8 of the ARAKI affidavit also shows the aspiration entertained by Pu-Yi, Emperor of Manchukuo at that time, and reveals that Pu-Yi was never placed under any restrictions to put into practice his aspiration and to administer state affairs out of his own free will and that he was very keen to execute his ideas.

124. The prosecution, as it has already been mentioned in the foregoing, has tried to establish the alleged fact that there was an intention to create a puppet state by means of such phrases as "seizure of real power" and "fait accompli" which it has picked out of the documents obtained from the Army and the Foreign Office. Conceding that these documents are authentic, there was no knowing under the then prevailing circumstances what disputes might happen should influential officials in the

1 Manchukuo Government be permitted to enjoy authorities
2 such as stated by Pu-Yi in the foregoing and later
3 proved by the duplicity in Kolumbi in North Manchuria
4 as well as in Jehol, these steps were but the natural
5 measures which should be adopted by any country that
6 might anticipate any suffering from the disputes.
7 Especially, as the Army had a very serious responsi-
8 bility for any of these local disturbances, these
9 phrases must have been added by the committee when
10 this question was brought before the Manchuria-
11 Mongolian Deliberation Council attached to the Cabinet
12 at that time, but it was far from the intention of
13 the Government to take them to mean monopolizing
14 Manchuria for the purpose of despoilment. It should
15 be considered to be prepared for an emergency.
16 Granted that these phrases had been included in the
17 first draft, it does not seem that the Cabinet
18 demanded their enforcement. Still less so as the
19 authenticity of these documents is not well established
20 and ARAKI's responsibility in this connection is not
21 clear.

22 126. The matter of deciding Japan's attitude
23 towards the establishment and recognition of Manchukuo
24 being related to diplomacy and was under the charge
25 of the Foreign Ministry, it was, therefore, the

1 natural duty of ARAKI, as Minister of War, to respect
2 the views of the studies of the Foreign Office and
3 have the Army do everything in its power to be fully
4 prepared for the maintenance of peace and order and
5 the safeguarding of national defense so that nothing
6 was to be desired on the part of the army. Therefore,
7 the demand in this respect was proposed, but other
8 than that he listened to and relied upon the views
9 of the Foreign Minister. The views stated above
10 were explained by the Foreign Minister and was later
11 approved and was made the decision of the Government,
12 which became the standard for further actions.
13 Should there have been aggression or its preparations
14 at that time with respect to the military action, it
15 would become a different story, but the lack of the
16 existence of such aggression or its preparation has
17 already been established. That being so, it is
18 natural that ARAKI, as the Minister of War, should
19 bear no responsibility with respect to matters
20 regarding treaties and other similar objects of a
21 crime. It was but too natural to follow these views
22 inasmuch as the reasons made clear said, as stated
23 above, that they did not violate the provisions of
24 treaties. Moreover, the term of a puppet government
25 is used by the third party based upon suspicion for

1 some political purposes or is quoted in connection
2 with some political intrigues for ulterior purposes,
3 and, therefore, should not be concluded lightly.
4 With the testimony already stated above, the contrary
5 fact to a puppet government will be established.

6 127. In addition, the fact that ARAKI
7 respected international treaties and adopted a very
8 prudent attitude to such an extent that peace and
9 order could be maintained is shown in the interroga-
10 tion taken by the prosecution on ARAKI at Sugamo
11 Prison,¹ as follows:

12 "I demanded that it (recognition) should be
13 postponed till the decision is reached by the League
14 of Nations, and I thought it could wait so long as
15 order was maintained." (March 8)

16 "I thought the postponement (of the recogni-
17 tion) was better provided order could be maintained."
18 (March 8)

19 "We did not think that it violated the
20 Treaty (the Nine Power Treaty)." (February 10).

21 I shall omit the next paragraph.

22 As can be seen from the evidence, at the
23 Privy Council meeting in January 1932, ARAKI replied
24 only to matters relating to the maintenance of peace
25 1. Ex. 187.

1 and order, and at the meeting held on September 13,
2 1932, when the recognition was approved, he only
3 stated about the amount of the military expenses to
4 be shared by Manchukuo in her joint defense with
5 Japan by way of the maintenance of peace and order.
6 It is added further, in order to show clearly the
7 whereabouts of the responsibility arising out of
8 official duties, that matters pertaining to treaties
9 and pending diplomatic questions were handled at that
10 meeting by the Foreign Minister.

11 VIII. Pacification of North Manchuria,
12 Kolombuir and Jehol.

13 129. The problems of the pacification of
14 North Manchuria, Kolombuir and Jehol all arose after
15 the declaration of the independence of Manchukuo.
16 Furthermore, the last pacification operations in
17 North Manchuria and the problems of Jehol and
18 Kolombuir arose following the signing of the Japan-
19 Manchukuo Protocol were mainly problems of the
20 preservation of law and order within the State of
21 Manchukuo. Japan, namely, fulfilled its international
22 obligations arising from the Japan-Manchukuo protocol
23 by protecting Japanese residents in Manchukuo and by
24 carrying out mopping-up operations jointly with the
25 Manchukuoan forces against the subversive elements

whose activities disrupted the law and order within that country.^{1.}

130. The mopping-up operations were first directed against General Ma Chang-shen, who, having once pledged allegiance to Manchukuo, assumed an important position in the government, and later, against the anti-Kirin Army of Ting Chao and the Army of Resistance against Japan and Manchukuo led by Li Tu, both of which attempted rebellion in April 1932. The operations against these armies were started then, and continued up to the time of Ting Chao's surrender in the following year, 1933. Ting Chao later assumed an important post in the Manchukuoan state. We shall omit describing the details of these facts inasmuch as they are noted in General ENDO's testimony,^{2.} MAZAKI's testimony,³ and ARAKI's affidavit.^{4.}

It is clear from the Lytton Report mentioned before that the Chinese side positively conducted activities aimed at disturbing peace and order in this area after the termination of the Shanghai Incident, pretending that they had won victory in that incident.

1. Tr. 28153, Ex. 3161. 3. Tr. 28461, Ex. 3168.
2. Tr. 19505, Ex. 2412. 4. Tr. 28154, Ex. 3161.

131. As a result of the attempted insurrection of Su Ping-Wei in December 1932 on which occasion two Japanese air officers of a force-landed aircraft were killed and the Japanese residents were endangered, Kolombuir was also made a target of the pacification operations of Japanese-Manchukuoan troops.

General ARAKI requested the Kwantung Army to consider fully the maintenance of good relations particularly with the Soviet Union. The Kwantung Army acted in accordance with this request and the Soviet Union also understood its position and cooperated with the Kwantung Army in rescuing Japanese residents. Thus the insurrection was suppressed within a short period of time.¹.

132. The contention of the prosecution concerning the pacification of Jehol was based on court exhibit 192-A,² which is a statement issued by the Foreign Affairs Department of China.

However, in considering this document, one should bear in mind the fact that it was drawn up after the termination of the Pacific War. The prosecution's allegation to the effect that the invasion of Jehol was commenced in July 1932 seems to

1. Ex. 2412, ENDO's testimony, Tr. 19496;
Ex. 3168, MAZAKI's testimony, Tr. 28461;
Ex. 3161, ARAKI's testimony, Tr. 28155.
2. Tr. 2269.

1 point at the skirmish caused as a result of the
2 firing by the Chinese troops on the Japanese
3 searching party, sent out after a Japanese govern-
4 ment official by name of ISHIMOTO, who had been
5 abducted from a train while traveling in Jehol
6 province. The small Japanese searching party, however,
7 withdrew immediately afterwards.^{1.} The Jehol campaign
8 was carried out by the Japanese-Manchukuoan troops in
9 the spring of the following year under the circumstances
10 as described in the attached table.^{2.}

11 War Minister ARAKI requested the Kwantung
12 Army not to let this campaign affect North China, in
13 particular. The Kwantung Army acted well in accord-
14 ance with this request and stopped at the line of the
15 Great Wall, in spite of tremendous operational dis-
16 advantages arising therefrom.

17 The prosecution exhibit 3165, a telegram
18 from the War Minister to the Commander in Chief of
19 the Kwantung Army shows that this expedition was
20 legal, as it was a joint operation of the Japanese
21 and Manchukuoan troops in conformity with the pro-
22 visions of the Japan-Manchukuoan Protocol, and that
23 the prosecution's allegation is without any
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25 1. Lytton Report, p. 109 of Japanese text.
2. Tr. 19496, Ex. 2412.

1 foundation.^{1.}

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1. Ex. 2412, ENDO's affidavit, Tr. 19496;
Ex. 3168, MAZAKI's testimony, Tr. 28461;
Ex. 3375, KOISO's testimony, Tr. 32202;
Lytton Report (Japanese Tr. pp. 147-148).

1 133. As it is stated in the foregoing para-
2 graphs, the events which occurred after March 1, 1932,
3 when Manchukuo declared its independence in response
4 to the wishes of its leaders and thirty million people,
5 and particularly after September 15 of the same year,
6 when Japan officially recognized the state of Manchukuo,
7 were entirely of a different nature as compared with
8 the events which occurred prior to these dates and were
9 the acts undertaken by Japan purely to discharge its
10 duties arising from her international obligations. The
11 Japanese Army therefore carried into practice the pro-
12 visions pertaining to the military matters stipulated
13 in the agreement between the two governments and thus
14 discharged its duties arising from the protocol binding
15 both the Japanese and Manchukuoan governments. How,
16 then, can these acts be regarded as criminal?

17 I shall omit the next three paragraphs.

18 VIII TANGKU TRUCE AGREEMENT AND DAIREN

19 CONFERENCE

20 135. The contents of the Tangu Truce Agree-
21 ment are clear from court exhibit 193. This agreement
22 was signed by General Ho Ying-Ching, the representative
23 of the northern branch of the Military Council of the
24 Kuomintang Government, and Major-General OKAMURA, Neiji,
25 Vice-Chief of Staff of the Kwantung Army, on May 31, 1933.

1 The circumstances leading up to the conclusion
2 of this agreement show that the resistance offered
3 against the Japanese troops was motivated by the
4 intention of Chiang Hsueh-liang and not by that of the
5 Chinese Central Government. The retirement from public
6 life of Chiang Hsueh-liang took place prior to the
7 conclusion of this agreement.

8 We can have therein a glimpse of the true
9 nature of the Manchurian regime and its relationship
10 with the Central Government of China, which tends to
11 show that Manchuria had not been completely under the
12 control of Manking as well as the complexity of the
13 Manchurian problem.

14 The Manchurian Incident was not a war between
15 Japan and China from the point of view of international
16 law, and therefore no peace treaty was signed after
17 its termination. A perfect state of peace was restored
18 in the relations between Japan and China following the
19 conclusion of this truce agreement among Japan, China
20 and the newly created state of Manchukuo.¹

21
22 136. Within one year and a half from the
23 assumption of the post of War Minister, ARAKI was able
24 to settle completely the armed conflicts resulting from

25 1. Testimony of witness ENDO, Saburo, tr. 19,496,
 ex. 2412; MAZAKI, tr. 28,461, ex. 3168

1 the Manchurian Incident, which was not a war but an
2 outburst of the evils of long years' standing and a
3 most complex and difficult problem which successively
4 pave rise to new situations.¹ Can this be called the
5 commission of an act of aggression? I believe that we
6 should rather recognize therein his meritorious deed
7 which was conducive to the realization of the establish-
8 ment of peace.

9 If one recalls that after the conclusion of
10 this agreement, ARAKI began earnestly to strive for
11 the establishment of internal security and of measures
12 aimed at bringing about world peace from Asia, and that
13 he tried to persuade several senior members of his
14 cabinet within six months after the occurrence of the
15 Incident as the first step of his endeavors, conferred
16 with the British Ambassador and tried to guide properly
17 both the rightist and leftist factions without any
18 ideological prejudice, then one would understand clear-
19 ly his attitude towards the settlement of the Manchurian
20 Incident.²

22 137. Although it is an internationally
23 recognized fact that the Manchurian Incident had been
24 completely settled by the conclusion of the Tangku
25 Truce Agreement, the following material can also be

1. Ex. 3161, tr. 28,156

2. Ex. 3161, tr. 28,454

1 found in the transcript of the court proceedings.

2 a) General MAZAKI testified in his affi-
3 davit,¹ "Then the hostilities were finally settled by
4 the conclusion of Tangu Agreement."

5 b) Prosecution witness Major General TANAKA,
6 Ryukichi stated,² from the practical point of view,
7 peace was established between Japan and China with the
8 Tangku Truce.

9 c) Defense witness Major General KATAKURA
10 testified on March 24, 1947:

11 "Around about June of 1933 the Tangku Truce
12 was concluded between North China and the Manchurian
13 side, and in July the so-called Dairen Conference was
14 held in Dairen with representatives from Japan, Man-
15 churia, and North China. As a result of this confer-
16 ence the military strife between North China and Man-
17 churia was, at least for the time being, brought to a
18 close, and it was decided that other outstanding prob-
19 lems thereafter be settled through amicable processes,
20 and efforts by ARAKI were made to have one-time enemies
21 become friends."
22

23 The transcript page for this quote is 19,033.

24 4. The Dairen Conference

- 25
1. Tr. 28,462
2. Tr. 2,108

138. The Dairen Conference was held beginning from the middle of July, 1933, following the conclusion of the Tangku Truce Agreement, assembling representatives from Manchukuo and China. The conference took up postal and railway issues and reached agreements thereon.¹

The conference later studied the customs, telegraph, and other issues, and solved all issues by the spring of 1935.²

139. As I have stated above, the armed conflict known as the Manchurian Incident ended with the conclusion of the Tangku Truce Agreement, following which the Sino-Japanese relations became closer than before, and two years thereafter the two countries raised the status of their respective diplomatic envoys to ambassadors from that of ministers. In the meanwhile the powers gradually came to recognize the state of Manchukuo. The act of assuming the task of handling, after it had occurred, the Manchurian Incident, an incident which at one stage was feared and suspected might spread into a worldwide conflagration and of terminating the gruesome armed conflict and of laying the foundation for a closer relationship between China and

1. Ex. 2505, witness FURUYAMA, Katsuo, April 28, 1947.
2. Tr. 19,035, testimony of Major General KATAKURA, March 24, 1947.

1 and Japan could not have resulted from a policy based
2 solely upon aggressive ambitions and force. I hope
3 that the Tribunal will fully consider ARAKI's earnest
4 endeavors and peaceful intentions by which he contribu-
5 ted in bringing about such a smooth result.

6 The independence of Manchukuo, an extraordi-
7 nary change which occurred before the termination of
8 the armed conflict, was nothing but a concretion of the
9 trends of long years standing realized at the spur of
10 the military hostilities. From the standpoint of inter-
11 national law, arguments both for and against the crea-
12 tion of Manchukuo are held by various people. However,
13 if one takes into consideration the actual situation
14 which prevailed then and thereafter in China, one cannot
15 pass too rigid a judgment on this matter, especially
16 in the light of the fact that some influential inter-
17 national jurists had also recognized the legality of
18 the state of Manchukuo.

19 Furthermore, ARAKI, far from trying to ob-
20 scure the issue, attempted to discuss the matter fully
21 with the powers to find a clear and peaceful solution.
22 In the midst of his endeavors, to which he devoted him-
23 self, however, ARAKI finally broke down from an illness.

24 140. ARAKI and International Problems

25 A. The relations with the League of Nations.

1) Japan's relations with the League of Nations were rather strained at the time of ARAKI's assumption of the post of War Minister. As the sending of an inquiry commission had already been decided by the League, ARAKI considered it to be a good opportunity to have Japan's faith and the true state of affairs recognized fully. He received the League's commission, entertaining great hopes.

I shall omit the next paragraph.

141. It was as a result of War Minister ARAKI's collaboration with the powers that, on the occasion of the First Shanghai Incident, Japan adopted a cooperative attitude, accepting the good offices of the consular corps of Britain, America, France and Italy, and concluded the truce agreement in consideration of the position of Shanghai as an international city.^P

142. I shall omit relating here the circumstances which led to Japan's recognition of Manchukuo, as they were already explained in the chapter concerning the recognition of Manchukuo, in which, we believe, ARAKI's concern for the maintenance of international collaboration in regard to Japan's recognition of Man-

1. Ex. 3167, tr. 28,443; ex. 3163, tr. 28,433; ex. 3168, tr. 28,462

chukuo was sufficiently established.

1
2 143. With respect to Japan's relations with
3 the League of Nations, ARAKI endeavored to seek its
4 understanding up to the time of the opening of the
5 General Assembly, by doing his utmost to explain the
6 complexity of the Manchurian Incident and his desire
7 for the maintenance of peace in the future. In the
8 interrogation taken at Sugamo Prison he stated:¹

9 "While the policy of the League was ex-
10 cellent, they were blind to the actual state of affairs,
11 taking the Lytton Report as a basis for their state-
12 ment. I proposed a Far Eastern Conference in October,
13 1933, to discuss the pending questions. This was wide-
14 ly reported by newspapers. Also in November, I told the
15 press people that the policy of the League of Nations
16 was correct and that we should have remained with the
17 League."

18 144. At the time when Mr. MATSUOKA was to
19 be despatched as Japan's chief delegate to the League
20 of Nations, the cabinet then decided that Japan should
21 remain within the League of Nations to the last and
22 endeavor to obtain its complete understanding, and the
23 instruction to the above effect was given to delegate
24 MATSUOKA. The resolution of the General Assembly was
25 1. Ex. 188 C, Feb. 7, 1946

1 adopted, however, before the termination of the hos-
2 tilities. Japan's position was not understood finally
3 and she withdrew from the League of Nations in accord-
4 ance with Clause 3, Article I of the Covenant. How much
5 ARAKI regretted this action appears in paragraph 10 of
6 the testimony of his close friend Lieutenant-General
7 NAKAJIMA made on September 16, 1947.¹

8 145. As Japan's secession from the League of
9 Nations was an inevitable step for her and there exist-
10 ed between the League and Japan no differences with the
11 exception of the Manchurian issue, Japan tried even
12 thereafter to continue to cooperate with the League in
13 its various peaceful projects.

14 I shall omit the balance of that paragraph.

15 In other words, it is clear that Japan did
16 not intend from the outset to withdraw from the League
17 of Nations and that the step was taken also against the
18 will of ARAKI. The then government decided for the
19 withdrawal on account of the lack of the agreement of
20 views with the League of Nations resulting from a fail-
21 ure of the diplomatic negotiations. ARAKI, as stated
22 above, regretted it, but he nevertheless gave his
23 agreement to this action from the viewpoint of his
24 responsibility for the maintenance of law and order in
25 1. Tr. 28,557

1 Manchuria. That he had fully respected the treaties
2 and international agreements we have already shown.

3 However, as the handling of these affairs
4 fell under the charge of the Foreign Office, ARAKI
5 respected the opinion of the Foreign Office. The opinion
6 voiced by him, therefore, had only an indirect effect.
7 Thus ARAKI could not carry into practice fully what he
8 had personally intended.

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146. A passage of the HARADA-SATONJI Memoirs¹ states that together with Foreign Minister UCHIDA, ARAKI insisted on an immediate secession from the League and differed from other members of his cabinet on this point. However, ARAKI, as said above, left the task of handling international problems in the hands of the Foreign Minister, whom he trusted. Therefore, the fact that he supported the Foreign Minister's views by expressing the same views himself, is nothing but a proof of his respect of the opinions of an expert and of the confidence he had placed in the Foreign Office. Viewed in this light, it can be said that the other cabinet ministers were irresponsible persons and that there was nothing unusual about the attitude taken by ARAKI in agreeing with the Foreign Minister's views, which he himself did not advocate positively. Furthermore, the Diet by then had already adopted a resolution approving Japan's move and the atmosphere which prevailed in Geneva was fatal. One must also remember that all this occurred during the last part of February when the final outcome of the issue had already been definitely shaped.

B) The Advocacy of the Far Eastern
Peace Conference.

147. ARAKI was by nature a proponent of inter-

1 national collaboration. In the concluding portion of
2 his speech in "Japan in Emergency", which was tendered
3 as a prosecution exhibit, ARAKI stated that the light
4 will soon shine in the East, and the future of Japan
5 and of Asia would be promising and, together with
6 Europe and America, it will maintain the real peace
7 of the world.

8 In the course of cross-examination, defendant
9 SHIRATORI replied affirmatively to the question put
10 to him by British prosecutor Comyns-Carr whether or
11 not ARAKI was an advocate of international collaboration,
12 and added an explanation to the effect that ARAKI's
13 spirit of international collaboration did not differ
14 fundamentally from that of Mr. SHIDEHARA.

15 148. ARAKI particularly regretted¹ that
16 Japan had parted with the League of Nations and wished,
17 as a remedial measure therefor, to convene a Far
18 Eastern peace conference assembling all nations having
19 interests in the Far East in order to strive for the
20 establishment of a peace which truly conformed to the
21 existing conditions in that area.² It is as previously
22 stated that ARAKI endeavored for the realization of this
23 conference and engaged in the basic study of emergency
24

25 1. Ex. 3161, T. 28,557
2. Ex. 3161, T. 28,446

1 national policy projects including this matter and by
2 preparing provisional outlines of his plan immediately
3 after the complete termination of the hostilities in
4 Manchuria brought about by the conclusion of the
5 Tangku Truce Agreement.

6 149. For the purpose of discussing this
7 project fully in the Diet Session of January 1934,
8 he requested the fellow members of his cabinet to
9 exchange their opinions so that he would be able to
10 face the Diet Session after having obtained the
11 unanimity of views on this subject. He therefore held
12 conferences of the ministers concerned (First, a
13 Five Ministers conference, including Premier, Foreign,
14 War, Navy and Finance Ministers; Second, a Six Minis-
15 ters conference, centering around Home, Agriculture,
16 Finance and Prime Ministers and also including War
17 and Communications Ministers - the latter being called
18 to participate as the representative of the political
19 parties) and gradually progressed towards the realiz-
20 ation of his project. Unfortunately, he broke down
21 from pneumonia on January 1, 1934, and his condition
22 became critical. However, his sense of responsibility
23 did not allow him to neglect the important session of
24 the Diet by remaining in his sickbed. He therefore
25 resigned from his post on January 23, after having

earnestly conveyed his cherished ideas to the Prime Minister and asked him to proceed with the establishment of a remedial measure.¹

150. Be that as it may, it was most unfortunate that there existed then within the government no one who was capable of carrying this project into practice, and this plan which was aimed at bringing about stability in Japan and peace in the world was consigned to oblivion. Thus he was disappointed with the members of the SAITO Cabinet. Later, when he was asked to accept again the portfolio of War following the resignation of his successor, War Minister HAYASHI, he declined the offer finally and would not enter the SAITO Cabinet again.²

151. The activities of ARAKI for the two years since he had assumed the post of War Minister in December 1931, amidst the strained emergency situation to the time when he settled the Manchurian Incident and stabilized thoughts, which tended to go to the extreme, were only a prelude, as it were, of his efforts aimed at contributing to the realization of his ultimate ideal, through which he hoped to eliminate the evils both at

1. Ex. 3166, and testimonies of Witnesses HASAKI and MAKAJIMA, T. 28,446, Ex. 3166; T. 28558, Ex. 3173

2. Ex. 3161, T. 28,163

home and abroad and to serve his country with the "Kodo" ideals he had long entertained, as well as to assist in laying the foundation for the establishment of world peace. His intentions are apparent in "The Outline of the Draft of Emergency Measures"¹ although this single document is not sufficient to bring the whole picture to light.

152. A review of his activities during those two years, in which he worked earnestly for the realization of this ideal, will reveal ARAKI's intentions at this juncture.

C). The Problem of International Treaties.

We contend that the difference of opinions on the question of international treaties does not, of itself, constitute a crime. We believe that in the event a law concerning war critics and war trials is stipulated in the future as a result of a fair and just conference of the world powers, then such a law would have a binding force on cases involving violations of international treaties. We cannot accept the theory that the international treaties and agreements as they exist today should have the same binding power. Furthermore, even if we conceded hypothetically to the contention of the prosecution that an interpretation

1. Ex. 3166, T. 28,446

1 of the prosecution that an interpretation placed by
2 those who are powerful of the international treaties
3 is just and right while another interpretation by
4 those who are weak may be criminal, we still claim
5 that, as far as ARAKI himself was concerned, there
6 cannot be found any instance of his violating inter-
7 national treaties and agreements. We shall first
8 rebut the following court exhibits which, the prosecu-
9 tion alleges, are related to ARAKI's testimony concern-
10 ing international treaties, made while he was in the
11 witness box.

12 154. Rebuttal Against Court Exhibit 1104¹

13 This exhibit is Mr. STIMSON's affidavit.

14 Relying on this affidavit, the prosecution contends
15 that, on November 24, 1931, the Japanese Foreign Minister
16 gave the American Ambassador an assurance saying,
17 "the Premier, the Secretary of War, the Chief of Staff
18 and he are agreed that towards Chinchow there shall be
19 no hostile operations and orders to that effect have
20 been issued." According to the same affidavit, how-
21 ever, the military action against the Chinchow Area
22 was again started after December 11, 1931 and Chinchow
23 was captured by the Japanese Troops on January 3, 1932.
24 It further stated that, at this stage, the annihilation
25

1 of the army organized by Chiang Chih-shih was completed
2 and the control of the whole Manchuria fell into Japan-
3 ese hands.

4 This affidavit is full of exaggeration and is
5 written with a complete disregard of the changes of
6 the actual situation. For instance, the allegation
7 that the army organized by Chiang Chih-shih was com-
8 pletely annihilated by the capture of Chinchow and
9 the whole of Manchuria was placed under Japanese
10 control, is nothing but an opinion, which is far too
11 remote from the facts already proven before this
12 Tribunal. This affidavit fails to note the fact that
13 the military expeditions to Chinchow were carried out
14 on two occasions, each under different circumstances,
15 and tends to give the impression as if the assurance
16 given on the previous occasion was broken on the next
17 occasion under exactly the same circumstances.

18 As the learned members of the Tribunal are
19 fully aware, the second military expedition against
20 Chinchow was carried out under the following circumstanc-
21 es: The discontinuation by Japan of the first expedi-
22 tion was utilized by the Chinchow regime as material
23 for counter-propaganda and they showed no sincerity
24 in the subsequent diplomatic negotiations, playing
25 only with treacherous ruses. Under the circumstances,

1 nothing worthy of note had been achieved in over a
2 month since the time of the previous cabinet. Mean-
3 while, soldier-bandits under the protection of Chiang
4 Hsueh-liang's regular troops commenced to make frequent
5 appearances even in the vicinity of Mukden, thus
6 endangering the safety of Japanese residents. It was
7 due to this newly created situation that Japan was
8 obliged to carry out another military expedition in
9 that area, and she attained her aim almost without
10 any bloodshed. The Tribunal will remember that the
11 above circumstances had already been explained in
12 connection with the account of the pacification of
13 Chinchow area. The affidavit in question further
14 stated that the operations were commenced on December
15 11th. According to this allegation, it becomes clear
16 that the expedition had already been started in the
17 field before ARAKI's assumption of the post of War
18 Minister. It would therefore be unjust to place the
19 responsibility for the breach of assurance on ARAKI.

20 In explaining the reason why Japanese expedi-
21 tionary forces, which had once been withdrawn under the
22 WAKATSUKI Cabinet, had to be sent out again for the
23 pacification of the same area under the INUKAI Cabinet,
24 defendant MINAMI testified that the step was taken on
25

1 account of the change of the circumstances.¹

2 155. Rebuttal Against Court Exhibit 2219.²

3 This exhibit had been offered in evidence as
4 an interrogation by the prosecution of defendant ARAKI.
5 However, this document in reality is nothing but a memo
6 taken down by the prosecution and is quite incomplete
7 as an interrogation, as it contains many erroneous
8 facts written down without correction through inadequate
9 interpretation.

10 It appears that this exhibit purports to show
11 where the responsibility lies for the rejection of the
12 protest lodged by the United States in the Spring of
13 1938 concerning the American rights and interests in
14 China. However, as it is already clear to the Tribunal,
15 the problems concerning diplomacy and military affairs
16 were all studied at the time by the Five Ministers
17 Conference, including Prime, War, Navy, Foreign and
18 Finance Ministers. The remaining cabinet members
19 having never been consulted about those matters, it
20 was not possible for ARAKI, who was then the Education
21 Minister, to know this fact, and, consequently, he had
22 no responsibility therefor. This fact has been clearly
23 testified to by witness RITA³ as well as witness ISHIWATA.⁴

25 1. T. 19,921-2

2. T. 15,841

3. Ex. 3169, T. 28,487

4. T. 15,837

156. Rebuttal Against Court Exhibit 2218.¹

1 This exhibit is a part of ARAKI's interroga-
2 tion taken by the prosecution pertaining to the rela-
3 tions between the Five Ministers Conference and the
4 Cabinet Meeting, and which purports to place the respons-
5 ibility for diplomacy and the military affairs on ARAKI,
6 who was Education Minister at the time.

7 In the first place, the questions and answers
8 contained therein lack clarity. ARAKI explained therein
9 that, should there have arisen important matters, they
10 would have been discussed at the cabinet meeting, but
11 as the importance of the matters then being considered
12 by the Five Ministers conference had not yet been
13 determined, they were not referred to the cabinet meeting.

14 It also seems that various other matters are
15 confusedly interwoven in that part of the interrogation.
16 In the final analysis, it seems to end in ARAKI's favor.
17 It is clear from its final paragraph that, although
18 ARAKI was of the opinion that the diplomatic policies
19 should be discussed at the cabinet meeting, those matters
20 were not discussed before ordinary cabinet sessions be-
21 cause the five ministers had strongly rejected the idea
22 that the cabinet ministers other than themselves should
23 participate in the discussions of the Five Ministers
24

Conference. It was at the time when Japan was entirely
absorbed in the prosecution of the China Incident. This
point can also be made clear from the testimony of
witnesses ARITA and ISHIWATA.

157. Rebuttal Against Court Exhibit 2216.¹

This exhibit appears to contain questions and
answers on the operational matters of the employment of
troops, but, on account of inadequate translation,
the meanings of some sentences lack clarity and precis-
ion. Moreover, whatever interpretation one may place
on them, it is clear that they are only devoted to
explaining the fundamental principles for the despatch-
ing of the troops. ARAKI being Education Minister at
the time, merely explained the principles for the use
of the troops. In any event, these answers cannot
constitute the basis of ARAKI's responsibility as
Education Minister.

158. Rebuttal Against court exhibit 2222¹

1 This exhibit contains questions put to
2 ARAKI on the subject of the cabinet meetings and
3 the Privy Council session concerning Japan's with-
4 drawal from the League of Nations.
5

6 As it was stated before, the SAITO Cabinet,
7 having decided at its cabinet meeting not to secede
8 from the League of Nations and to endeavor to seek
9 the League's understanding to the last, instructed
10 Chief Delegate MATSUOKA to that effect before his
11 departure. However, as the result of the develop-
12 ments of the proceedings at the General Assembly,
13 Japan was obliged to leave the League of Nations,
14 and the Government, following the lead, had to make
15 its determination.
16

17 Such were the circumstances leading up to
18 Japan's withdrawal from the League of Nations. How-
19 ever, the act itself of seceding from the League was
20 permitted by its Covenant, in which there was no
21 provision stipulating that the exercise of this right
22 constituted a crime. Furthermore, in the course of
23 an interrogation by a prosecutor at the Sugamo Prison,
24 ARAKI gave the following reply:

- 25 1. Tr. 15,845
2. Ex. 3161, Tr. 28,170

1 "From my point of view, I felt sorry about
2 the withdrawal from the League of Nations. I believed
3 that Japan should have stayed in the League.

4 "I also told a newspaper reporter assigned
5 to the War Office that Japan should stay in the
6 League of Nations. My talk was published in the
7 press and the people said that I was weak."¹

8 Witness MAZAKI also stated in his testimony²
9 that he "was under the impression that the War Ministe r
10 had been prepared with an opinion with which he hoped
11 to persuade the League of Nations."

12 Chapter 5. The Application for the Dismissal
13 of All Charges Concerning the
14 Manchurian Incident.

15 159. We respectfully ask the Tribunal to
16 seriously consider the dismissal of all charges con-
17 cerning the Manchurian Incident, separating them from
18 all the Counts of the Indictment including conspiracy,
19 on the grounds (a) that the Manchurian Incident was
20 an incident of a peculiar and unique nature and that
21 it should be regarded as a problem already solved,
22 and (b) that the jurisdiction of this Tribunal only
23 covers the war which was in existence at the time of
24

- 25 1. Ex. 187, Interrogation of February 11.
2. Ex. No. 3168, Tr. 28,463

1 the issuance of the Potsdam Declaration. However,
2 here we shall deal only with the former ground,
3 leaving the latter to the general summation.

4 The Peculiar Character of the Manchurian
5 Incident.

6 160. The Manchurian Incident was not a war.
7 The Manchurian Incident was a military action which
8 commenced by the Lukouchiao Incident and ended by
9 the conclusion of the Tangku Truce Agreement. How-
10 ever, it was not a war intended to be such by the
11 governments of the two countries involved but a
12 series of armed conflicts caused by untoward local
13 incidents. As it was shown already, the WAKATSUKI
14 Cabinet, which was in power at the time of the sudden
15 outbreak of the incident, proclaimed the exercise of
16 the right of self-defense. The succeeding INUKAI
17 and SAITO Cabinets continued the same policy. The
18 governments of the two countries involved always
19 maintained positions wherefrom they could enter peace
20 at any time, both having no intention to go to war.
21 For that reason, there was no declaration of war
22 and the diplomatic relations of the two countries
23 were being continued throughout the incident.

24 161. From the outset of the incident, the
25 citizens of the two nations lived in each other's

country without being subjected to any restraint or
1 oppression, continued to engage in their peaceful
2 pursuits and received no restriction in traveling
3 within both countries. The diplomatic relations of
4 the two countries had been maintained normally until
5 the two countries terminated the use of military
6 force by the conclusion of the Tangku Truce Agree-
7 ment. As far as the international relations between
8 Japan and China were concerned, it was nothing more
9 than an incident between Japan and Manchuria and an
10 act of self-defense on the part of Japan against the
11 unlawful actions of Chiang Hsueh-liang.
12

13 It must also be remembered that the special
14 character of the Manchurian region as well as the
15 peculiar nature of the relations between the Chiang
16 family and the Central Chinese Government had been
17 left unaltered. Therefore, no peace treaty was con-
18 cluded between Japan and China, and, in this regard,
19 it entirely differs from the Shanghai Incident.
20

21 Immediately after the outbreak of the Inci-
22 dent, Sung Tzu-wen made a proposal concerning the
23 settlement of the Incident to the Japanese Ambassador,
24 SHIGEMITSU,¹ and Premier INUKAI, on the Japanese side,
25 also sent his confidant, Mr. KAYANO, Osakazu, to

1 Nanking to have him negotiate with the Chinese leaders.

2 The fact that the Manchurian Incident did not
3 result in a rupture of the diplomatic relations be-
4 tween the two countries concerned is a proof that
5 it was an exercise of the right of self-defense.
6 The Lytton Report stated that Japan's action could
7 not be regarded as an act of self-defense as the
8 initial incident was too insignificant, but the same
9 report took cognizance of the then prevailing situa-
10 tion, in which a major conflagration could have been
11 kindled with a single match in view of the local
12 conditions before the outbreak of the Mukden Inci-
13 dent, and stated that it would be difficult, except
14 for those who are thoroughly familiar with the real
15 conditions of that area, to pass a judgment on the
16 situation.

17 The situation having been such, the Japanese
18 Government and the central army authorities neither
19 could foresee nor assess the situation prevailing
20 there. Everyone who had travelled in Manchuria in
21 those days also expressed his impression to the same
22 effect. Everyone equally recognized the absence of
23 law and order there as well as the strained atmos-
24 phere existing between China and Japan. One must
25 take it for granted, however, that a considerable

1 amount of malicious conjecture and calumny should
2 have been contained in the telegrams sent by the
3 Foreign Office representatives, Consuls HAYASHI and
4 MORISHIMA, possibly because of the rumors deriving
5 from the emergency situation and the strained senti-
6 ments which existed between the Army and the local
7 Foreign Office agencies. It must be added that the
8 HARADA-SAIONJI memoirs also have the same tendency
9 in this respect.

10 The circumstances having been such as were
11 set out in the HONJO Testament, both for the central
12 army authorities and the government, the quickest
13 way to prevent the incident from spreading into a
14 major conflagration and to find an amicable solution
15 was to largely respect the views of the authorities
16 in the field.

17 B. The Manchurian Incident was Not an Act
18 of Aggression.

19 162. It was not a mere incident caused be-
20 tween the two countries beyond their borders. A
21 situation arose wherein not only Japan's vested rights
22 and interests in that region residents could not be
23 safeguarded because of the anti-Japanese activities
24 and the people's contempt for Japan, regardless of
25 the fact that Japan possessed various rights and

1 interests there including the right to station
2 troops. When the incident of the blowing up of the
3 railway occurred, the Japanese troops stationed
4 there exercised their right of self-defense in
5 order to carry out their duty. Under the circum-
6 stances which prevailed in China in that period
7 cases of similar nature often occurred on account
8 of the Chinese Government's failure to protect the
9 rights and interests of powers in accordance with
10 the provisions of the treaties.

11 Among the incidents of a similar nature
12 were the shelling of Nanking by the British and
13 American warships and Britain's despatching of troops
14 to Kiukiang. Japan also had her bitter experiences
15 on several occasions in Tsiaan and Shanghai. Would
16 international jurists recognize these actions as
17 acts of aggression? The crossing of the Japanese
18 troops beyond the limits of the Manchurian Railway
19 Zone constituted nothing but a combination of the
20 right of self-defense, the legality of which is also
21 recognized by international jurists.

22 163. As it was stated before, as far as
23 Japan was concerned, neither the authorities on the
24 spot, nor the central government authorities enter-
25 tained the least intention to create an independent

1 state. A declaration to that effect was made before
2 the Diet by Premier INUKAI.¹ Witness MITARAI testi-
3 fied,² "I know that Premier INUKAI was a fervent
4 advocator of respecting the Chinese sovereignty and
5 the security of her territory." Witness ISHIWARA's
6 testimony³ also established this point.

7 The desire for independence, which the
8 people in that region had entertained for a long
9 period, set spurs to the independence movement
10 taking advantage of this opportunity. When the
11 opportunity for the independence of Manchuria had
12 become ripe, the Kwantung Army first assessed the
13 views as to whether this movement should be suppressed
14 or left alone. Finally the Kwantung Army determined
15 its views in favor of independence, if independence
16 was feasible, inasmuch as it would have been impos-
17 sible to maintain law and order in Manchuria, if the
18 rising tide of the independence movement were not
19 left alone. This view, together with a report on
20 the prevailing situation, was conveyed to the central
21 Japanese authorities, when Chief of Staff ITAGAKI was
22 ordered to proceed to Tokyo in January, 1932. The
23 central government, as it was already shown, respected
24

25 1. Ex. 2418, Tr. 19,570
2. Tr. 17,818
3. Ex. 2584

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- 25 1. Ex. 2418, Tr. 19,570
2. Tr. 17,818
3. Ex. 2584

1 the views of the army in the field and let the
2 Manchurians proceed according to their own wishes,
3 if they were to cooperate in preserving law and
4 order in that region. (The foregoing circumstances¹
5 were clearly established in the HONJO Testament,
6 testimonies of ITAGAKI, MATSUOKA and ARAKI.)

7 We attribute the reasons why the Lytton
8 Commission's report, while it gave a detailed ac-
9 count of the circumstances, drew a conclusion con-
10 trary to the facts, to the lack of cognizance, on the
11 part of the Commission, of the true situation and
12 their method of basing the report on propaganda²
13 and tendencious explanations which exaggeratingly
14 underlined a few somewhat excessive cases occurring
15 in the course of warlike operations. I shall omit
16 the balance of that paragraph.

17 C. No atrocity was Committed During the
18 Manchurian Incident.

19 164. The Lytton Commission's Report testi-
20 fies to the fact that not a single case of general
21 acts of atrocity occurred during a year and eight
22 months of the Manchurian Incident. This is a proof
23 of the fact that the Manchurian Incident broke out
24

25 1. Ex. 2043, Tr. 15,001-8
2. Ex. 192A

1 in spite of self-restraint on the part of the Japan-
2 ese and that it was not caused through enmity or
3 rancour.

4 165. Major General KATAKURA, Tadashi, testi-
5 fied as a witness:

6 "At the time the Japanese attitude was,
7 those who took a hostile attitude toward Japan would
8 be punished, but those who had ceased resistance would
9 be welcomed and absorbed into ordinary Manchurian life.
10 They were not treated at all as prisoners of war."¹

11 166. The prosecution pressed witness ENDO,
12 Saburo asking him whether regular troops had not been
13 executed under the pretext that they were bandits,
14 but he replied clearly that it was not the case.²

15 167. The only instance which may have served
16 to create the suspicion of the commission of atroci-
17 ties during the Manchurian Incident, was Mr. Powell's
18 testimony which was accompanied by an article from
19 the Chicago Daily Tribune presented to the Tribunal
20 to confirm his testimony. The inquiry conducted in
21 the Tribunal revealed, however, that the Powell
22 testimony was based upon an article appearing in the
23 China Weekly Review, which the witness had written
24

25 1. Tr. 18,997
2. Tr. 19,507-8

1 relying on information from Chinese sources and that
2 the article in the Chicago Daily Tribune was a repro-
3 duction of the same article, being, therefore, devoid
4 of an accurate foundation.

5 The event referred to in that article took
6 place as a result of the fighting which occurred
7 when Lieutenant INOUE, commanding the small Chieng
8 Chin-Tsai Garrison unit while advancing on a search-
9 ing mission, was attacked by a large number of ban-
10 dits, pushing ahead to strike the Chiang Chin-Tsai
11 Garrison troops. It is clear that the event did
12 not occur in the manner as was publicized, but it
13 was reported, on the contrary, that the Japanese
14 unit rescued villagers and other people. All in
15 all, this evidence has no probative value as it was
16 an article written by Mr. Powell on the basis of
17 hearsay which he obtained from the rumours concerning
18 the battle conditions of a small unit in a restricted
19 locality.

20 D. The Manchukuoan Government was not a
21 puppet regime.

22 168. What is the definition of a puppet
23 regime?
24

25 What is the meaning of the expression,
"puppet regime," as used by the prosecution? Could

1 all independent and sovereign states receiving politi-
2 cal, economic or military aid from other countries
3 be called "puppet regimes"? Could the Balkan states
4 and other newly-founded countries of Europe be called
5 puppet regimes manipulated by some other countries?
6 Are the countries generally known as "satellites"
7 puppet regimes? It is customary with all newly-
8 founded states to receive support and assistance of
9 various kinds from their friendly neighbors.

10 It is evident, however, that the countries
11 providing aid are liable to act selfishly and make
12 the recipients of aid their "puppets," vis-a-vis
13 Manchukuo, but it is our contention that the Japanese
14 Government was particularly mindful of this point
15 and took every precaution so as to enable it to
16 govern itself independently. ARAKI having had deep
17 concern particularly about this point, opposed the
18 creation of an advisory organization out of Japan's
19 diplomatic agency and insisted on the exchange of
20 ambassadors. To call Manchukuo a puppet regime, in
21 our contention, is nothing but a political calumny
22 deriving from a malicious design to make unfavorable
23 propaganda between the relations of other countries.

24
25 169. The circumstances leading up to Man-
chukuo's Independence.

1 It is as previously stated that Manchukuo's
2 birth was a result of spontaneous efforts of the Man-
3 churians. Therefore I shall dwell on it only briefly.
4 It is clear that the Japanese leaders had no pre-
5 meditated design towards Manchukuo, judging from the
6 fact that the Japanese Government was flurried at
7 the foundation of Manchukuo and devised measures
8 towards it only after it had come into being. The
9 HONJO Testament testified to this point. Even if
10 assistance and cooperation were given to it in the
11 meantime, one cannot call Manchukuo a puppet regime
12 because of that, as such steps were only natural and
13 the examples of the kind could be found everywhere.

14 Even if a powerful country gave assistance
15 to a powerless country, one cannot say that the
16 former made a puppet of the latter. When the policies
17 of a newly-founded state were a cause of great mis-
18 givings to another state and, if, in that event, the
19 latter state gave guidance to the former so as to
20 forestall disadvantages, can one say that the former
21 has become a puppet manipulated by the latter?
22

23 In other words, to accuse someone irrespon-
24 sibly with aggression or founding of a puppet regime
25 only by seizing upon some transitory phenomena must
be said to be an entirely unreasonable assertion.

THE PRESIDENT: Before you go further, Mr. McManus, a serious question arises here. On page 195 you attacked the Lytton Commission on certain grounds. On page 196 you disclose the grounds are from the Japanese observations. You strike out the reference to the Japanese observations, and it looks as though you are quoting from the record itself, from the evidence. Unless I make comment such as this from time to time, we will be grossly misled, perhaps, unless we have a clear recollection of all the evidence. I suggest you go through the balance of your summation and strike out everything not supported by evidence; not merely the reference to rejected documents but to the contents of the rejected documents which you have used.

MR. McMANUS: If your Honor pleases, I thought I had done that. However, I may have overlooked one or two points, and I shall carefully scrutinize the balance of the summation and try to comply with your Honor's wishes.

If your Honors please, it was not my intention in the summation to attack the findings of the Lytton Inquiry. I merely wanted to present certain facts so that your Honors could determine whether or not the Japanese leaders at that time were of the

1 opinion as to whether or not they were right or their
2 state of mind.

3 THE PRESIDENT: The state of mind of every
4 accused must be determined on the evidence before us
5 and not on rejected evidence.

6 MR. McMANUS: I merely mention these facts,
7 if your Honor pleases, with the sole intention, and
8 no other reason except, to try to assist the Tri-
9 bunal.

10 THE PRESIDENT: We cannot be assisted by the
11 reference to evidence or to statements from rejected
12 documents. We can only be misled.

13 We will adjourn until half-past one.

14 (Whereupon, at 1200, a recess
15 was taken.)

16 - - -
17
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25

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: The accused MATSUI is absent from the courtroom due to illness.

With the Tribunal's permission the accused KIDO and KAYA will be absent from the courtroom during the second period of the afternoon session conferring with their counsel.

MATSUI is represented by counsel.

Mr. McManus.

MR. McMANUS: 170. The true aspects of the activities of the State of Manchukuo.

So many examples can be seen in past history as well as at present of a newly-founded country receiving aid from a friendly third country, that such a practice can be said to be almost customary among nations.

Foreign Minister UCHIDA once explained at a Diet session, Japan at the time of the Meiji Restoration received great assistance both in men and material from Britain, America, France and Germany. The number of the foreigners then employed by the Japanese

Government exceeded more than 500. Japan, therefore,
1 had relied more on foreign aid than than Manchukuo
2 depended on Japan's assistance at the time of her al-
3 legedly puppet existence. Manchukuo being based on the
4 principle of the harmony of the five races and its
5 government structure well established, culture within
6 that state became incomparably more advanced than at
7 the time of Chang Hsueh-liang's regime, and the people
8 could live happily.¹

9
10 To a question put to him on cross-examination
11 by Captain Kleiman, prosecution witness ex-Admiral
12 OKADA, Keisuke, replied that he thought he was doing
13 a good deed for Manchuria.² What he stated represents
14 the desire of the then government of Japan and was
15 desired even more strongly by ARAKI. The fact that
16 ARAKI later did not attend the 10th Year Anniversary
17 of Manchukuo because of the situation then prevailing
18 in that country amply explains his state of mind.³ It
19 must also be added that the whole Japanese nation en-
20 tertained the same hopes and desires towards Manchukuo
21 as did ARAKI.

22 A pessimistic observation is made in Part 2,
23 Chapter Vi, of the Lytton Commission's Report, in which
24

- 25
1. Ex. 3158, T. 28,076, Affidavit of Woodhead
2. T. 1,894
3. Ex. 3161, T. 28,153

it is stated:

1 "There is no indication that this 'Government'
2 will in fact be able to carry out many of its
3 reforms. To mention but one example, there
4 seem to be serious obstacles in the way of the
5 realization of their budgetary and currency
6 reforms, etc. . . ."

7 In the light of the progress which Manchukuo
8 achieved later, it is evident that the members of the
9 Inquiry Commission did not have an insight into the
10 real causes which lay behind the prevailing situation.
11 The Commission itself testified to the difficulty of
12 assessing the situation in Manchuria for someone with-
13 out a sufficient knowledge about that region. Although
14 the Lytton Commission made great efforts to assemble
15 all kinds of information, its findings included many
16 such matters which did not coincide with the actual
17 state of affairs.

18 ARAKI's contention was that Japan's assistance
19 should have been mainly directed to induce Manchukuo
20 itself to attain the ideal of its foundation, namely
21 the harmony and concord among the five races. His
22 discontent was due to the fact that the reality dif-
23 fered from his aspirations, there being some among the
24 Manchukuoans who were not satisfied with the prevailing
25

1 state of affairs. All this shows that ARAKI was sin-
2 cerely hoping for the success of Manchukuo as an inde-
3 pendent state and did not have the least intention to
4 seek profit from Manchukuo or to make it a puppet re-
5 gime.

6 171. Guidance given by Japan.

7 It is a fact that Japan gave support and as-
8 sistance to Manchukuo ever since Japan's recognition
9 of the new state. Japan extended recognition to Man-
10 chukuo not for the purpose of making it a puppet state
11 but because she hoped that Manchukuo would develop
12 into a full-fledged country. It is needless to say
13 that Japan, because of her peculiar position, had var-
14 ious views and opinions as to the means of giving coop-
15 eration and assistance to Manchukuo, but there had
16 been no one in the responsible position at the time of
17 the INUKAI and SAITO Cabinets who had the intention
18 of infringing upon the independence of Manchukuo. The
19 prosecution had presented nine consecutive documents
20 in evidence starting from court exhibit 222, which
21 we shall refute as follows:

22 We wish to point out first of all that these
23 documents (Ex. 222 and its subsequent numbers) were
24 made after Manchukuo was founded and was officially
25 recognized by Japan; and so most of the cross-examination

by the prosecution based upon these documents, against
1 the contents of ARAKI's affidavit was, we should say,
2 entirely far afield. For instance, the prosecution
3 referred to exhibits Nos. 222, 223, 224, 225, 226, 227,
4 228, 230, 231, 233, 234, and 187,¹ on the cross-
5 examination of ARAKI re his affidavit, in which ARAKI
6 stated:

7 "The decision of the government on this
8 problem was also to leave it alone to the
9 Manchurian people and to make no interference
10 with it inasmuch as the primary concern of the
11 government was in preservation of law and order."²
12

13 However this part of ARAKI's statement con-
14 cerned the state of affairs prior to the independence
15 declaration of Manchukuo, whereas the documents re-
16 ferred to by the prosecution related to matters after
17 the declaration, some of them even after the official
18 recognition of the state.

19 173. Exhibit No. 222³ and others appear to be
20 the documents with which the Japanese Government regu-
21 lated the basic policy of coping with the new state of
22 affairs, but in the absence of a complete record at
23 that time, it is not possible for us to know the
24

- 25
1. T. 28,288
2. T. 28,140
3. T. 2,817

deliberations which constituted the background of
1 these documents, nor are we in a position to know how
2 far the contents of these documents were put into
3 practice. However, we have good reason to believe that
4 some of them were never practiced, whereas some were
5 merely the plans of a division chief or a section chief
6 of the General Staff, and stopped there. There are
7 some in the form of answers to inquiries bearing the
8 name of ARAKI, but with the lack of the original tele-
9 grams of inquiry, there is no way of knowing the exact
10 meaning of those documents. That one (222) is dated
11 the 1st of March is a primary mistake because it appears
12 to be the decision of the cabinet of its policy after
13 Henry Pu-Yi's assumption of the post of the Executive
14 Administrator of Manchukuo. The Customs Office at
15 that time was within the Japanese Leased Territory
16 and in view of its special relation with Japan, Manchu-
17 kuo had to immediately set up a plan to settle this
18 question. This fact caused the Japanese Government to
19 hold a cabinet meeting which resulted in this decision,
20 and this, we contend, is very good proof to show that
21 the foundation of Manchukuo was not the result of a
22 premeditated program of Japan. The request of the army,
23 is stated in Chapter 5, that, that in which it placed its
24 first importance in pacification of bandits and
25

1 protection of Japanese nationals. As for such phrases
2 as "grasp of real power,"¹ and "accomplished status,"²
3 they appear in almost every chapter of this document.
4 It seems that the people in charge of these affairs
5 adopted them, as they were drafted by those who had
6 apprehensions over the situation. As a whole, we be-
7 lieve that this document honestly represents the anxiety
8 on the part of the Japanese Government as to whether or
9 not they could place full confidence in the new regime.
10 This document was made because the government desired
11 that the Government of Manchukuo would not be thrown
12 into utter confusion because of problems such as Open
13 Door Policy, Equal Opportunity and Employment for For-
14 eigners, and we can see further a state of confusion
15 even in the Japanese Government at that time. What
16 we cannot see is how this document could be taken
17 as the one purporting to make the new regime a puppet
18 of Japan, or as the one interfering with it, because
19 the document was a timely measure to avoid a further
20 disorder of the situation.

21 174. Exhibit No. 223³ was presented by the
22 prosecution as the record of cabinet meeting held on
23 April 10, 1932, but YOKOMIZO testified that the cabinet
24

- 25
1. T. 2,819
2. T. 2,819
3. T. 2,825

meeting did not keep any record of its deliberation.¹

1 This document looks very much like a draft prepared
2 by the Foreign Office concerning Japan's aid and
3 cooperation on finance and economy of Manchukuo. From
4 its wording, ". . . taking into consideration the
5 demands of the new state and its missions towards the
6 Empire",² this document seems to show Japan's intention
7 of financial and economic assistance.

8 175. Exhibit No. 224³ is nothing but the
9 settlement of the question of Japan's purchasing some
10 railways of a private concern, a question which had
11 been pending for some time in the past.

12 176. Exhibit No. 225⁴ is also nothing new.
13 The matter on which a negotiation had started in 1930
14 was brought to a decision at the time of WAKATSUKI
15 Cabinet at its cabinet meeting, and the decision was
16 made into a written form on account of the new founda-
17 tion of the Manchukuo Government. It was possible as
18 well as natural that the military authorities (army
19 and navy) requested that a full consideration be given
20 to the question of Japanese garrison in that area, as
21 it had much importance from the viewpoint of the
22

23 1. Ex. 3171, T. 28,537

24 2. T. 2,826

25 3. T. 2,827

4. T. 2,830

1 national defense. We contend that there was nothing
2 unusual in so doing.

3 177. Exhibit No. 226¹ is not dated but appears
4 from its contents to have been made after the founda-
5 tion of Manchukuo. Primarily, the military affairs
6 concerning Chientao had been under the jurisdiction
7 of the Korean Army, and so was the protection of Japan-
8 ese nationals there. With the organization of the Man-
9 chukuo Government the army submitted to the central
10 authorities its opinion, in this document, that same
11 be transferred to the Kwantung Army. Other matters
12 contained in this document were also administrative
13 measures of similar nature. These questions should
14 have been clarified as far as the Kwantung Army was
15 concerned, and this document shows no sign of Japan's
16 interference with or restriction over the affairs of
17 Manchukuo. That the Kwantung Army negotiated with
18 the Manchukuo Government over these matters was quite
19 natural under the circumstances where the hostilities
20 of the Manchurian Incident were still going on. There
21 is at least nothing in this document which seems to
22 restrict the Manchukuo Government. With the lack of
23 the telegram, to which this document was made in reply,
24 this is the only explanation we can offer about the
25 1. T. 2,836

and economic lines as well as in improving installations
for security of national defense and law and order.

182. Exhibit No. 233¹ was made at the time
when Manchukuo, having achieved due development, re-
quired the sound development of her economy, culture
and maintenance of law and order and security of
national defense as her imminent necessity. Especially,
the government under the Executive Administrator had
lasted for two years and there was a gradual outcry
for establishment of a monarchy. This document seems
to have regulated various necessities concerning ad-
ministration. Since Japan had a special agreement with
this nation whose foundation had not been quite solid,
it was only her duty to do this by virtue of her being
a senior nation.

While the army requested the Manchukuo Govern-
ment not to neglect the security of law and order and
the national defense, its attitude was fully defensive.
This is clearly shown in Chapter 6 where the expression
"defensive equipment" is used.

Furthermore, there was a committee in the
cabinet at that time, consisting of several governmental
departments which were related to Manchuria. This
committee, as one of the organs of the cabinet, set up
1. T. 2,926

1 the plan and its method of practice about Manchurian
2 affairs. The regulation was that the important ones
3 should be submitted to the cabinet meeting for decision,
4 and so it was not necessary to submit all matters to
5 cabinet meetings. This fact is further clarified in
6 the document by the descriptions of "Committee of the
7 Investigation of the Executive Policy towards Manchuria
8 and Mongolia", "The Financial Investigation Committee
9 toward Manchuria", and "Japanese and Manchurian Indus-
10 trial Administrating Committee".

11 184. We hope we have fully explained in the
12 above how mistaken and prejudiced it is to assume the
13 exhibits aforementioned as proof of Japan's alleged
14 intention of Manchurian domination. We have repeatedly
15 stated that Japan had been aiming to settle the Man-
16 churian problems in such a way as would set up a land
17 of peace in one corner of the Far East. Japan desired
18 the birth of a model nation to make it a criterion
19 for China for her unification. With regard to the
20 question of the sovereignty of China over Manchuria,
21 ARAKI considered that Manchukuo and China would be able
22 to come to terms after the settlement of these various
23 affairs. ARAKI expressed this view to Lord Lytton,
24 saying that in such a vast country as China, peace had
25 to be established gradually, section by section. Above

1 all, ARAKI had the intention of holding an International
2 Peace Conference of the Far East after the Tangku
3 Treaty to eliminate all causes of future trouble and to
4 consolidate a firm foundation for peace.¹

5 Before the League of Nations had adopted its
6 decisions, the Japanese Government submitted its
7 opinion of the Lytton Report to the League, and fully
8 deliberated the differences of opinion as expressed in
9 the Lytton Report.

10 I shall omit the next sentence.

11 Lord Lytton himself admitted in his report
12 the difficulty of studying the truth of Manchurian
13 affairs.

14 It is a grave mistake to say that because of
15 this cooperation between Japan and Manchukuo, Japan had
16 an intention of dominating Manchuria or that Japan
17 intended to make Manchukuo her puppet government. It
18 is also respectfully called to this Tribunal's atten-
19 tion that many countries officially recognized Manchukuo,
20 and even the United States, in her informal talk, ex-
21 pressed an agreement of the recognition. These facts,
22 it is our contention, will explain, more eloquently
23 than anything else, the real state of affairs at that
24 time.
25

1 and economic lines as well as in improving installations
2 for security of national defense and law and order.

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8 the government under the Executive Administrator had
9 lasted for two years and there was a gradual outcry
10 for establishment of a monarchy. This document seems
11 to have regulated various necessities concerning ad-
12 ministration. Since Japan had a special agreement with
13 this nation whose foundation had not been quite solid,
14 it was only her duty to do this by virtue of her being
15 a senior nation.

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17 ment not to neglect the security of law and order and
18 the national defense, its attitude was fully defensive.
19 This is clearly shown in Chapter 6 where the expression
20 "defensive equipment" is used.

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22 cabinet at that time, consisting of several governmental
23 departments which were related to Manchuria. This
24 committee, as one of the organs of the cabinet, set up
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2 affairs. The regulation was that the important ones
3 should be submitted to the cabinet meeting for decision,
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19 for China for her unification. With regard to the
20 question of the sovereignty of China over Manchuria,
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24 saying that in such a vast country as China, peace had
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2 Peace Conference of the Far East after the Tangku
3 Treaty to eliminate all causes of future trouble and to
4 consolidate a firm foundation for peace.

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6 decisions, the Japanese Government submitted its
7 opinion of the Lytton Report to the League, and fully
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20 and even the United States, in her informal talk, ex-
21 pressed an agreement of the recognition. These facts,
22 it is our contention, will explain, more eloquently
23 than anything else, the real state of affairs at that
24 time.
25

185. Aspects of an Independent State.

1 Court exhibit 3165-A offered in evidence by
2 the prosecution on September 12, 1947 (a telegram
3 of congratulationsto Manchukuo, sent by the War
4 Minister to the Commander-in-Chief of the Kwantung
5 Army) clearly shows War Minister ARAKI's attitude
6 toward Manchukuo. The telegram contains the con-
7 gratulations and gratitude of the War Minister towards
8 the Commander-in-Chief of the Kwantung Army concerning
9 the completion of the pacification of Jehol on March
10 11, 1933. The text of the telegram includes the
11 following items:
12

13 1) Through a close cooperation of the armies
14 of Japan and Manchukuo,

15 2) a great success has now been accomplished
16 in the task of eliminating banditry in Jehol.

17 3) I congratulate you for having consolidated
18 the foundation of the peace in Asia.

19 4) Please transmit above to the Manchukuoan
20 National Army.

21 In Items (1) (through a close cooperation between the
22 armies of Japan and Manchkuo)¹ and (4) (Please transmit
23 above to the Manchukuoan National Army) it is clearly
24 shown that War Minister ARAKI treated on an equal
25

(1. Ex. 3165-A, Tr. 28,381)

1 footing the armies of Japan and Manchukuo and paid
2 them due respect. Item (2) shows that the Jehol
3 Campaign was nothing more than a mopping-up operation
4 against the bandits in Jehol and Item (3) in which
5 the War Minister expressed his congratulations for
6 the consolidation of the peace in Asia clearly shows
7 ARAKI's objective in settling the Manchurian Incident.
8 It is a communication between organs within the army,
9 being a telegram sent by the War Minister to the
10 Kwantung Army commander, which did not require half-
11 hearted diplomatic phraseology and in which one can
12 perceive the true motives of the sender.

13 It is also customary with the high command
14 and the war offices of every country to send telegrams,
15 in the names of the Chief of the General Staff and the
16 War Minister, after a large military engagement to
17 the highest ranking officer of the army concerned, in
18 recognition of his services. It is difficult to under-
19 stand for what purpose the prosecution tendered this
20 telegram in evidence. For the reason stated above,
21 we shall ask the Court to consider this document as
22 one tendered by the defense also.

24 186. The Treatment of Manchukuo by the
25 Powers as an Independent State.

We shall now further ask the Tribunal to

1 judicially notice the following facts in their con-
2 sideration of ARAKI's connection with the recognition
3 of Manchukuo as an independent state.

4 1) Manchukuo was recognized by Japan on
5 September 15, 1932.

6 2) The Dairen Conference was convened in
7 July, 1933, assembling the representatives from China
8 and Manchukuo and an agreement was concluded, con-
9 cerning postal and railway services.

10 3) Between the Soviet Union and Manchukuo,
11 the Agreement on the River and Waterway Traffic was
12 signed in July, 1934. The Agreement for the Sale of
13 the Chinese Eastern Railway was signed in March, 1935.
14 The two countries also exchanged consuls.

15 4) Japan announced the abolition of its
16 extraterritoriality in Manchukuo as well as the trans-
17 fer of the administrative rights of the Manchurian
18 Railway Zones in August, 1935, and enforced the same
19 by the end of November 1937.

20 5) The Vatican recognized Manchukuo in April,
21 1934.

22 6) The Republic of Salvador recognized
23 Manchukuo in May, 1934. Salvador was a member of the
24 League of Nations.
25

7) The Republic of Dominica recognized

Manchukuo in October, 1934.

8) Italy recognized Manchukuo in November,
1 1937.

2 9) Spain recognized Manchukuo in December
3 1937.

4 10) Germany recognized Manchukuo in May, 1937.

5 11) Poland recognized it in October, 1938.

6 12) Hungary recognized it in January, 1939.

7 13) Slovakia recognized it in March, 1939.

8 14) Rumania in December, 1940.

9 15) Bulgaria recognized Manchukuo in May, 1941.

10 16) Finland in July 1941.

11 17) Croatia recognized Manchukuo in August,
12 1941.

13 18) Thailand recognized it in August 1941.

14 19. Denmark recognized Manchukuo in August,
15 1941.

16 20) Great Britain despatched an economic
17 mission to Manchukuo.

18 E. Now for the purpose, once again, of
19 calling to the attention of the Tribunal that there
20 existed no aggressive warfare conspiracy to dominate
21 any part of Asia or the World, we respectfully point
22 out and contend that there is definitely no relation-
23 ship between the Manchurian Incident and the China
24
25

1 Incident.

2 187. It is the fact as has been previously
3 stated that Japan, China and Manchukuo re-entered
4 into a state of peace by the conclusion of the Tangku
5 Truce Agreement and the Dairen Conference.

6 188. The National Government of China issued,
7 on June 10, 1935, an Ordinance for the Promotion of
8 International Amity, which said:

9 ". . . while international good faith
10 should be faithfully kept and international
11 peace should be established in harmonious
12 cooperation with other countries, above all
13 it is of urgent importance to promote friendly
14 relations with our immediate neighbors. . ."¹

15 By issuing this order, the National Government, in
16 consideration of its bitter past experience of having
17 engendered the Manchurian Incident through the anti-
18 Japanese activities and acts of contempt against Japan,
19 endeavored to re-establish friendly relations between
20 Japan and China so as to avoid the recurrence of
21 incidents of a similar nature.

22 189. In 1934, Japan and China raised the
23 status of their Ministers stationed in their respective
24 countries to that of Ambassadors, and on June 16 of
25 (1. Ex. 2506, Tr. 20,965)

1 the same year, the Japanese Ambassador to China,
2 ARIYOSHI, presented his credentials to Mr. Lin-Shen,
3 the President of the National Government of China.
4 Whereupon, the relations between Japan and China
5 became more friendly and the two countries came to
6 cooperate more fully with each other.

7 190. In July, 1937, the Lukouchiao Incident
8 broke out quite unexpectedly. Two years had elapsed
9 between the time of the conclusion of the T'ingku
10 Truce Agreement in May, 1933, and the date of
11 Ambassador ARISUYE's presentation of his credentials
12 in June, 1935. Two more years had passed before the
13 outbreak of the Lukouchiao Incident in July, 1937,
14 making the total of the time elapsed four years. In
15 the light of the developments such as stated above
16 during this long period, it is clear that there is
17 no conceivable relationship between the Manchurian
18 Incident and the China Incident. The relations be-
19 tween Japan and China had become even more close
20 than in the past. We shall attempt to more fully
21 clarify this point by enumerating below views of
22 various circles as extracted from the record of the
23 proceedings of this trial.
24

25 As it was pointed out previously, all Japanese
witnesses, including prosecution witness Major General

1 TANAKA, Ryukichi and defense witnesses Major General 1
2 KATAKURA, Tadashi and Lieutenant General ENDO, Saburo
3 equally stated that the Manchurian Incident had been
4 terminated by the conclusion of the Tangku Truce Agreement.

5 Chinese witness General Ching Ten-chun on
6 July 25, 1946, in answer to a question in cross-examin-
7 ation by counsel OKAMOTO, stated that the Lukouchiao
8 Incident broke out as a result of the Hsien Incident,
9 which was an entirely unforeseen incident. In other
10 words, he meant that the Lukouchiao Incident broke
11 out with the Hsien Incident as its remote cause and
12 that there existed no plan nor connection with which
13 he could link it with the Manchurian Incident.

14 In Court exhibit 213 (prosecution document
15 No. 1871-E, entitled "Summary of Japanese War Crimes
16 in China from September 18, 1931, to August 13, 1937,
17 Ministry of Foreign Affairs, Republic of China) it is
18 stated:

19 "Beginning in the summer of 1935,
20 Japanese military planes flew frequently over
21 and landed around Peiping and Tientsin. . . Now
22 North China had become peaceful. Therefore,
23 diplomatic relations between Japan and China
24 should promptly be conducted on a normal basis. . ."

25 In the above document, it is made clear that

1 the Chinese Government contended that perfect peace
2 was restored between Japan and China through the con-
3 clusion of the Tangku Truce Agreement, that it was
4 after 1935, two years after the conclusion of the
5 Tangku Truce Agreement, that Japanese airplanes flew
6 for the first time to the Peiping-Tientsin area, and
7 not a single incident occurring before the aforementioned
8 1935. It is evident that, even if Japan had relied on
9 a provision of the Tangku Truce Agreement to justify
10 a violation of the border by a Japanese airplane two
11 years later, the act itself did not impair the effect
12 of the Tangku Truce Agreement.
13

14 In the opening statement for the prosecution
15 phase on the General Preparations for War, Prosecutor
16 Brigadier Quilliam stated as follows:

17 "In June 1937, the month before the Marco
18 Polo Bridge Incident the Japanese War Office
19 prepared a Five-Year Plan for the production
20 of war materials. . ."

21 "Until 1938 the number of Divisions and
22 Independent Brigades remained fairly constant. . ."

23 "Significant evidence of the aggressive
24 intentions of Japan is obtained from the function
25 and scope of the General Mobilization Law. This

Law, which has already been produced in evidence as

1 Court Exhibit No. 84, was adopted in 1938. . ."

2 "It is not too much to say that by the
3 adoption of this law Japan at one stroke became
4 a totalitarian state and finally committed her-
5 self to a policy of aggression and expansion. . ."

6 "It is suggested that it is of the utmost
7 significance that as early as 1938 this drastic
8 law should have been adopted and such all-
9 embracing powers obtained. It is also sug-
10 gested, indeed it is obvious, that without
11 those powers the war preparations could not
12 have been made. . . ."¹

13 In other words, it was stated that real war
14 preparations could not have been made without the
15 powers embodied in the National Mobilization Law,
16 that the National Mobilization Law first came into
17 being only after the outbreak of the China Incident,
18 and that all measures had been taken on the basis of
19 the China Incident. Leaving aside the question of
20 whether to admit all these contentions, they serve to
21 clarify the fact that there was no direct connection
22 between the Manchurian and China Incidents. It was
23 as though the prosecutor had definitely stated here
24 that there was no war preparation going on at the time
25 (1. Tr. pp. 8196, 8197, 8198)

1 of the Manchurian Incident.

2 On October 24, 1946, prosecution witness
3 Liebert testified as follows:

4 "After 1932, the aggression or war against
5 Manchuria was a closed affair. That had been
6 completed. Whatever happened in the relations
7 between Japan and China didn't break out formally,
8 as I recall, until 1937."¹

9 Although we cannot accept the charge of ag-
10 gression contained in this prosecution's expert witness'
11 report he had unquestionably testified that the Man-
12 churian Affair had been a closed affair and that it
13 had nothing to do with the China Incident. Further-
14 more, that there is no relationship between the Man-
15 churian and China Incidents is a matter of common
16 knowledge among people at large.

17 The Conclusion of the Lytton Commission's
18 Report ("Considerations and Suggestions to the Council,"
19 Lytton Commission's Report Chapter X, Comments, Page 291).
20

21 At the end of the Lytton Commission's report,
22 the following passages can be found:

23 "On August the 30th Count UCHIDA is reported
24 to have declared at Tokyo:

25 "The Government considers the question
of Sino-Japanese relations as more important

than the question of Manchuria and Mongolia.'

1 "We cannot close our Report more appropri-
2 ately than by reproducing here the thought
3 underlying these two statements, so exactly does
4 it correspond with the evidence we have collected,
5 with our own study of the problem, and conse-
6 quently with our own convictions, so confident
7 are we that the policy indicated by these dec-
8 larations, if promptly and effectively applied,
9 could not fail to lead to a satisfactory solution
10 of the Manchurian question in the best interests
11 of the two great countries of the Far East and
12 of humanity in general."
13

14 Japan and the Lytton Inquiry Commission finally
15 differed in their views concerning the method for the
16 solution of the Manchurian problem, but it is clear
17 from the statement of Foreign Minister UCHIDA that
18 the then Japanese Government attached more importance
19 to the fundamental relations between Japan and China
20 than the problem of Manchuria.

21 It is also clear, therefore, that Japan
22 intended to establish peace between Japan and China
23 on the basis of the Tangku Truce Agreement. The
24 occurrence of the Lukouchiao Incident four years there-
25 after cannot delete the fact that a complete peace was

1 established between Japan and China through the con-
2 clusion of that agreement.

3 191. The prosecution also anticipates the dis-
4 missal of the charge concerning the Manchurian Incident.

5 The following statement was made by prosecutor
6 Comyns-Carr in response to the defense's argument
7 concerning the jurisdiction of this Tribunal.

8 "Whether the war of Japan against China
9 should be regarded as continuous from the
10 18 September 1931, onwards or as having a
11 fresh start on 7 July 1937, is one which the
12 Tribunal may find it necessary to determine on
13 the facts. The Indictment provides distinct
14 Counts (2 and 3, and 18 and 19, and 27 and 28)
15 enabling the Tribunal to give effect to either
16 view which it may take on this question. In
17 our submission, even if the Tribunal should
18 take the view (contrary to the submission that
19 we shall make) that those are to be regarded
20 as separate wars, there is nothing in the r
21 Charter, the Terms of Surrender or the Potsdam
22 Declaration to prevent the Tribunal from exer-
23 cising jurisdiction with regard to crimes
24 committed by any of the defendants in connec-
25 tion with either of them."

1 It is obvious that there is no connection
2 whatsqever between the Manchurian and China Incidents.
3 Even if Prosecutor Conyns-Carr might have drawn a
4 clear distinction between the two incidents, he asserted
5 in his conclusion that the jurisdiction of this Tri-
6 bunal which is based upon the ~~Charter~~ and Potsdam
7 Declaration could be exercised over the Manchurian
8 Incident, and pointed out 6 counts of the Indictment,
9 including Count 11.

10 The period of 18 years covered by the Indict-
11 ment is nothing but a tentative limit which the prose-
12 cution had set in presenting their charges, but nothing
13 is mentioned either in the Charter or the Potsdam
14 Declaration whether or not the Manchurian Incident is
15 to be included among the matters to be tried at the
16 present Tribunal, and the decision, therefore, lies
17 entirely in the hands of the prosecution. Consequently,
18 we contend that the Tribunal will have committed no
19 violation of the Charter and the Potsdam Declaration
20 by segregating the charges on the Manchurian Incident
21 from the Indictment and by dismissing them from the
22 present trial.

23 The Commander of the Allied Powers, to whom
24 the Chief of Counsel is to render appropriate legal
25 assistance (Charter, Article 8) issued the purge

1 directive on January 4, 1946, directing the Japanese
2 Government to promulgate the purge order. The same
3 directive stipulated that the persons who had been
4 in public offices between July 7, 1937, and September 2,
5 1945, were to be affected by the purge order but not
6 since September 18, 1931.

7 THE PRESIDENT: Would you give us the exhibit
8 numbers of those purge orders, please?

9 MR. McMANUS: Yes, your Honor, I shall put
10 them on an errata sheet and attach them to the summa-
11 tion.

12 The above directive, therefore, recognizes
13 July 7, 1937, as the date of the commencement of the
14 past war. There is no reason, at this juncture, to
15 make a distinction between the war crimes trials and
16 the purge order.
17
18
19
20
21
22
23
24
25

1 Furthermore, it must be mentioned that the
2 former Deputy Chief of the General Staff, General
3 HAZAKI, who, having a direct connection with opera-
4 tions, handled the settlement of the Manchurian
5 Incident together with War Minister ARAKI, and who
6 had been incarcerated in the Sugamo Prison at the
7 same time that ARAKI was so incarcerated, was released
8 on August 30 last year, 1947. Would this fact not
9 constitute a clear proof that the prosecution had
10 recognized the legality of the military operations
11 at the time of the Manchurian Incident?
12

13 This concludes the chapter of our summation
14 with respect to the Manchurian Incident, and I most
15 earnestly hope that the Tribunal will either dis-
16 miss all charges concerning the Manchurian Incident
17 from the Indictment or acquit ARAKI and all the other
18 defendants in so far as these particular charges are
19 concerned.

20 Chapter IV - ARAKI's Dissociation with the
21 Army.

22 On January 23, 1934, when ARAKI resigned
23 from the post of War Minister due to illness, he was
24 appointed War Councillor and remained at that post
25 until March 6, 1936, when he was retired from active
service. During this period he was watching the

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23 from the post of War Minister due to illness, he was
24 appointed War Councillor and remained at that post
25 until March 6, 1936, when he was retired from active
service. During this period he was watching the

1 army gradually become disorganized, especially
2 between 1934 and 1936 when the ousting of the
3 Inspector General of Military Education, and the
4 assassination of General NAGATA occurred. He was
5 most deeply concerned over the whole matter, but
6 the views of the army leader at that time were
7 different from his own. Ultimately, the deplorable
8 February 26th Incident occurred, and immediately
9 following this he was retired from the active list.
10 After this the War Minister Active Service system was
11 received, closing all ways for his return to army
12 service and completely severed his relation with the
13 army.

14 1) The duties and the authority vested on
15 War Councillors.

16 The position of War Councillor was as often
17 said amongst army officers, an old people's home --
18 a storage for possible war-time army commanders among
19 the generals on active service list without any par-
20 ticular assignment. Therefore, during peace time,
21 to keep these men away from interfering in the army's
22 administration and command, they were given no duties
23 nor was any authority vested in them. Only when an
24 especially important question arose would he be
25 required to answer inquiries by the War Minister, or

1 if the Emperor would address a special question to
2 then, they would get together and reply to the Throne.
3 They were given no power to decide nor had they any
4 rules or regulations as to the council. It is true
5 as Mr. Horwitz stated in his explanation of the
6 Supreme War Council,^{1.} that the council played no
7 part with respect to tactics and strategy. Not only
8 tactics and strategy, but also played no part with
9 respect to army administration.

10 2) While ARAKI was a Military Councillor,
11 except for a scandal within the army, nothing impor-
12 tant took place.

13 (1) He held the post of Military Councillor
14 for approximately two years, but during the entire
15 period not a single enquiry of importance was made
16 of them.^{2.}

17 I shall omit the next paragraph.

18 (3) During his two years' tenure of office,
19 there were incidents extremely damaging for its
20 prestige inside the army. There were namely: the
21 dismissal of the Inspector General of Military Educa-
22 tion; the murder of Major General NAGATA, Chief of
23 the Military Affairs Bureau inside the War Ministry
24

25 1. T. 672.

2. T. 28164.

1 Building; etc. The dissatisfaction of the young
2 officers, who were quieted for a time, again became
3 apparent and improper actions began to be taken. The
4 KODO faction, the TOSEI (Control) faction, the
5 SEIGUN (the picked troops) faction and the sort,
6 were widely discussed, and anonymous and inciting
7 letters were being scattered. Cheap magazine and
8 newspaper reporters and professional political hangers-
9 on were utilizing them as material for instigating
10 public opinion. Information brokers were selling
11 these to businessmen, and in some extreme cases to
12 foreign envoys. Even those of a higher level who
13 were engaged in gathering information began buying up
14 these commercial "intelligence" for their own use.
15 Some of them became the official reports by foreign
16 envoys to their home government and exerted an evil
17 influence on Japan's foreign relations as well as on
18 her internal political affairs. One is surprised to
19 find, in reading Ambassador Grew's "Ten Years in
20 Japan," that it is filled with this type of information.
21 A large quantity of this kind of information seemed to
22 have reached, in particular, the Soviets. This was
23 the reason why ARAKI was gravely misunderstood after
24 the February 26th Incident, at home and abroad.
25 Numerous examples in the HARADA-SAIONJI Memoirs show

1 that HARADA also used these sources of information
2 as a basis and tying them up with the hearsay items
3 he himself heard and reported same to Prince SAIONJI.

4 4) This was about the time such denomina-
5 tions as "KODO faction" and TOSEI faction" were in-
6 vented by these "information gatherers" and became
7 widely spread among the people. Each person had his
8 own views as to the best way to manage the situation,
9 which meant that there were conflicting opinions, but
10 did not mean that various cliques were formed in the
11 army. Since there were no party rules or regulations,
12 making it clear who were members and who were not, a
13 man was often referred to as belonging to the KODO
14 faction in one of these reprehensible pieces of litera-
15 ture and as belonging to the TOSEI faction in another.

17 Witness TANAKA, Ryukichi, in reply to Mr.
18 Comyns Carr's question, testified as though bodies
19 by the name of KODO faction and TOSEI faction actually
20 existed. This, too, was probably based upon the
21 rumors circulated at the time. In reply to the prose-
22 cution's question as to who was the head of the KODO
23 faction, Witness TANAKA merely said that the radical
24 officers looked up to ARAKI, NAZAKI, and YAMAGAWA as
25 their central figures, but never said that these men
actually controlled or headed a group of men. In

1 short, it means nothing more than that the young
2 radical officers respected them. Whether Witness
3 TANAKA himself was one of them or not has not been
4 made clear.

5 Nevertheless, except for internal disorder
6 in the army, it will be made clear that no important
7 inquiries were made during the period ARAKI was War
8 Councillor.

9 3) Retirement of General ARAKI.

10 (1) At the time ARAKI was War Councillor,
11 i. e., around 1935, as we have already explained,
12 the army faced a period of grave confusion and dis-
13 order. The fact that the army could not cope with
14 this period suitably became the seed of Japan's
15 internal and external entanglements and misfortune in
16 latter years.

17 (2) The cause of this disorder was the
18 deference of Japan's national opinion. Whether
19 military or the civil population, it was divided as
20 to the best way for Japan to protect herself against
21 the attack by the Third Communist Internationale and
22 the pressure put upon her by the other powers after
23 the Washington Disarmament Conference.

24 First, there were those who began to admire
25 some of the ways of the new Nazis activities in Europe.

1 They wanted to combat the Third Internationale in the
2 German style and at the same time reorganize the nation.

3 Secondly, there were those who wanted to
4 reorganize the country by communism and to look
5 towards Russia as their fatherland.

6 Thirdly, there were the ones who only wanted
7 to be left alone so they could enjoy themselves.
8 These wanted the status quo.

9 Fourthly, there were those who wanted to
10 gain the world's confidence from the moral point of
11 view by idolizing the Imperial House and faithfully
12 following its way. According to Japan's basic teach-
13 ing, these men considered substantial improvement,
14 to the Japanese people to form a moral nation, the
15 prime necessity.

16 Fifthly, there were those who were indecisive
17 with nothing in mind but the advance of themselves.
18 Among the so-called intelligentsia and the members of
19 universities were increasing cries against capitalism.
20 These were not included in the second category. How-
21 ever, among the university professors and students
22 were a number who were against the military and Japan's
23 national policy, advocating communism, or socialism.

24 Amongst the financial circles, party politi-
25 cians and the upper classes many naturally fell into

the third category. These were the most frequently
1 attacked by both the left and right extremists. Most
2 of the young members of the army circles also advo-
3 cated reorganization, and began to lift up their heads
4 advocating whichever way they chose -- either the
5 first or the fourth.

6 The fifth group is to be found at any time,
7 in any country. They were preoccupied in self-preser-
8 vation and as far as saving any situation, they were
9 more harmful than helpful.

10 3) It was natural for some of those belong-
11 ing to the first and fourth groups who had a certain
12 amount of worldly knowledge and who somewhat over-
13 stressed reality, or practicality, to attempt practical
14 consolidation of the military by central control,
15 following the wake of the Germans. And they tried to
16 carry out a social reformation on this line. These
17 even commenced to appear among the spirited and in-
18 tellectual members of the central army offices.

19
20 Opposed to this were those who laid too much
21 stress on ideal or spirit. They saw by their own
22 eyes the bad social conditions and came to the conclusion
23 that to improve this it was first necessary to improve
24 the minds of the public. As a result, remembering the
25 Emperor's words to the effect that he, the Emperor

1 himself, is responsible for each and every Japanese
2 to a place in society and if even a single person was
3 unable to find one it was he, the Emperor's own fault,
4 came to think that the primary teaching for the
5 Japanese was to revere the Emperor and promote his
6 way. Especially the excitable old-time officers
7 attached to provincial units, who were daily seeing
8 the critical state of the farmers came to attempt to
9 carry this ideal out even at the sacrifice of their
10 own self.

1 THE PRESIDENT: Where did you get all this,
2 Mr. McManus? This is like a speech in the Diet or an
3 address to the U.N. It is not like a summation in a
4 court. It is wholly unrelated to the evidence.

5 MR. McMANUS: If your Honor please, I was
6 just trying to point out ARAKI's association with the
7 KODO faction.

8 THE PRESIDENT: Yes, proceed.

9 MR. McMANUS: I shall omit the balance of
10 that down to the bottom of the page, number 4.

11 4) ARAKI was with the front line troops
12 during World War I and himself observed a war between
13 civilized nations. Since then he held the belief that,
14 together with the development of science, future
15 warfares between civilized nations would be drastic
16 and become the crucial problem for mankind. He
17 considered general mobilization and total warfare the
18 felling step from wars between men to wars between
19 beasts, and earnestly tried to think of a way to
20 remedy this. He came to the conclusion that the
21 cultivation of Japan's basic national teaching of
22 benevolence, and the proper and just martial spirit,
23 in other words practicalness, was the answer. By this,
24 he believed that even if war was inevitable, it would
25 be ended quickly, as human beings should do, and if

possible prevented in time.

1 THE PRESIDENT: This might have been put
2 in a statement from the dock if the Charter permitted
3 it, but as I pointed out months ago the Charter does
4 not permit any such thing. No other accused has
5 attempted anything of this kind, Mr. McManus. It is
6 only wasted on us. We must decide in accordance with
7 the evidence.

8 MR. McMANUS: If your Honor pleases, I shall
9 refrain from reading part of this and ask that it be
10 included and made part of the record.

11 THE PRESIDENT: No, it cannot go into the
12 record if it is objectionable, as it is. This alleged
13 summation covers 420-odd pages. Its length is accounted
14 for by the fact that to a great extent it is not
15 evidence.

16 MR. McMANUS: If your Honor pleases, there
17 are some passages in here which tend to explain the
18 situations at the time and to give your Honors a back-
19 ground so that your Honors --

20 THE PRESIDENT: We cannot be told these things;
21 they are not in evidence. It is not right to keep
22 on repeating that we are confined to the evidence.

23 Is any other accused prepared to present his
24 summation at this stage? If so, we will adjourn this
25

for revision.

1 MR. McMANUS: If your Honor please, I can
2 continue to another chapter.

3 THE PRESIDENT: We do not want to hear
4 anything that is not in evidence. I have made a dozen
5 appeals to eliminate material that is not in evidence,
6 but it has been fruitless as far as I can gather.

7 MR. McMANUS: If your Honor please, I could
8 continue and start at page 248 with paragraph 206.

9 THE PRESIDENT: My Colleagues, who have been
10 perusing the document as I have been talking to you,
11 have discovered a number of quotations from rejected
12 documents.

13 MR. McMANUS: They are marked out, if your
14 Honor please, on my copy. I had not intended to read
15 them.

16 THE PRESIDENT: I do not like to adjourn at
17 this stage. We are within twenty minutes of the mid-
18 afternoon recess, but if KAYA's summation is ready we
19 will take it.

20 Can you guarantee that for the next twenty
21 minutes you will omit anything not supported by
22 evidence, Mr. McManus? If you can, we will hear you.

23 MR. McMANUS: I shall attempt to do so, if
24 your Honor please.
25

1 THE PRESIDENT: Well, if you fail to do so
2 we will adjourn this matter for revision and take the
3 next case that is ready. Proceed for the time being.

4 MR. McMANUS: I shall start at page --

5 THE PRESIDENT: One of my Colleagues wants
6 a conference on this, so we will adjourn for that
7 purpose.

8 (Whereupon, at 1425, a recess was
9 taken until 1500, after which the proceed-
10 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. McManus, we have decided
4 not to hear any more of ARAKI's summation until it
5 is revised; that is to say, until all the statements
6 of fact not supported by evidence are struck out.
7 That will apply to all future summations which may
8 similarly offend. We simply will not allow you to
9 address us on statements of fact, or of alleged fact,
10 not in evidence. No court would.

11 MR. McMANUS: If your Honor pleases, this
12 is quite a lengthy summation and I am sure that you
13 understand it is impossible for me, within a period
14 of just a half-hour or so, to revise this accordingly,
15 so consequently to do as your Honor suggests, it
16 certainly would take me overnight to do it.

17 THE PRESIDENT: Yes. KAYA's case is next
18 and will take the whole of the afternoon and longer
19 perhaps, so we adjourn your summation, or the balance
20 of it, for revision, Mr. McManus, and we will take it
21 after KAYA's summation if you are ready.

22 MR. McMANUS: I might call to the Tribunal's
23 attention that from chapter eight to the end of the
24 summation it is almost exactly as your Honor wants it;
25 however, the part between where I am right now and

1 chapter eight will have to be revised, if your
2 Honor pleases.

3 THE PRESIDENT: Mr. Brown.

4 MR. BROWN: Your Honor, may we take it that
5 any statement of fact not supported by citation will
6 be disregarded by the Tribunal?

7 THE PRESIDENT: We expect you to give the
8 citation, either the page of the transcript or of
9 the exhibit, but it will be too much to say that we
10 will reject a statement of fact supported by evidence
11 but where the citation is not referred to or is not
12 given. We do expect citations. Without them, of
13 course, we are put to great trouble, but so far
14 counsel have not offended in that respect. Where
15 they have the evidence they generally refer to it
16 by stating the page of the transcript or the exhibit
17 number.

18
19 MR. BROWN: In this particular summation,
20 your Honor, there are statements which look sometimes
21 as though they might refer to evidence. It is not
22 clear whether they do or do not, and there is no
23 citation. I am merely referring to such cases as
24 that.

25 MR. McMANUS: With regard to Mr. Brown,
if your Honor pleases, I am sure after your Honor

1 has read this summation that you will note all the
2 footnotes and notice the citations which I stated,
3 and in most instances I have struck out the portions
4 where I do not have any citations for any statements
5 made.

6 THE PRESIDENT: Personally I will not
7 disregard any statement of fact in a summation which
8 is supported by evidence simply because it does not
9 give the citation; nevertheless, on behalf of the
10 Tribunal, I direct you to give the citation. That
11 applies to all summations, not only to yours,
12 Mr. McManus.

13 Mr. Levin.

14 MR. LEVIN: Mr. President, Members of the
15 Tribunal.

16 THE PRESIDENT: KAYA was excused from attend-
17 ance this afternoon, but I understand he is present
18 now. In any event you are here, Mr. Levin.

19 Mr. Levin.

20 MR. LEVIN: Mr. President, Members of the
21 Tribunal, I might say before I begin that I was in
22 the midst of preparing an errata sheet in connection
23 with this summation, anticipating that the ARAKI
24 summation would not be concluded before tomorrow
25 afternoon; however, I trust that I may have it ready

1 by sometime tomorrow morning and have distribution
2 of it made so that the Tribunal may avail itself
3 of the information which is contained therein.

4 I request, too, Mr. President, that any
5 portions of the summation which I do not read and
6 which I do not ask to be deleted be made a part of
7 the transcript of the record. There will be quite
8 a number of pages which I shall not read.

9 THE PRESIDENT: Provided the omitted parts
10 contain submissions of law and statements of facts
11 supported by evidence and citations and nothing
12 more than that.

13 MR. LEVIN: I am sure, Mr. President, we
14 made a very scrupulous effort to have this summation
15 contain nothing but references to the evidence and
16 to the documents and such submissions of law as we
17 deem have been presented here.

18 I begin to read the summation on behalf
19 of Mr. KAYA:

20 In making this summation on behalf of the
21 accused KAYA, we shall follow the divisions made by
22 the prosecution and comment seriatim on the evidence.

23 A. First Period:

24 Covers the period from the time he first
25 entered the Finance Ministry up to the time he was

1 appointed Finance Minister on June 4, 1937, that is,
2 the period in which he was a minor official of the
3 Finance Ministry.

4 B. Second Period:

5 Covers the period he was Finance Minister in
6 the First KONOYE Cabinet, commencing on June 4, 1937
7 and ending May 26, 1938.

8 C. Third Period:

9 Covers his service as President of the
10 North China Development Company for two years and
11 two months; from the time when he resigned as
12 Finance Minister in the First KONOYE Cabinet until
13 he became Finance Minister in the TOJO Cabinet, from
14 May 27, 1938 to October 17, 1941.

15 D. Fourth Period:

16 Covers the period he served as Finance
17 Minister in the TOJO Cabinet, from October 18, 1941
18 to February 19, 1944.

19 At this point we would like to call the
20 attention of the Tribunal to the probative value of
21 the evidence adduced on behalf of the defendant KAYA.
22 We shall classify the evidence into three groups:

23 1. The first comprises evidence tendered
24 and accepted during the KAYA individual phase.

25 This group comprises the testimony of

1 fourteen witnesses, three documents, and KAYA's own
2 testimony. None of these witnesses was cross-
3 examined by the prosecution. This is without prece-
4 dent in this trial. The prosecution's cross-examina-
5 tion of KAYA himself was short and simple. This
6 indicates the reliability of the evidence adduced.
7 Of the few points raised by the prosecution in con-
8 nection with the testimony of the defendant KAYA, we
9 shall go into their relevancy at a later stage.

11 May I say, Mr. President, that I am reading
12 the summation as corrected, for which I have prepared
13 an errata sheet. There may be some parts where I am
14 reading somewhat different from the document you have.

15 2. The second group refers to defense
16 evidence adduced in other phases.

17 Of the evidence in the second group, the
18 two exhibits concerning military currency have direct
19 connection with KAYA. One of these was an affidavit
20 of a witness and there was no cross-examination by
21 the prosecution. And none of the other evidence in
22 reference to KAYA was questioned on the point of
23 relevancy.

24 3. The third group comprises evidence
25 tendered by the prosecution, and of this group, we
wish to point out those parts which are in KAYA's

1 favor.

2 We believe there will be no objection by
3 the prosecution to this. We wish to point out that
4 the basis of our argument is evidence high in proba-
5 tive value as mentioned above.

6 A. First Period, N-9-2:

7 The prosecution has pointed out that of the
8 accused, KAYA's record with the Japanese Government
9 is the most active and extensive of all. We do not
10 agree with this contention, but we do not wish to
11 argue the matter for the contention does not prove
12 KAYA's criminal responsibility. On the contrary,
13 KAYA's service with the Japanese Government shows
14 the following facts:
15

16 1. That he was sincere, faithful and con-
17 scientious in his work.

18 2. That he struggled against the powerful
19 military when only a mere bureau chief to prevent
20 increase in military expenditures and international
21 race in armaments, and despite the difficulties
22 achieved fair success.

23 3. That he exerted great efforts toward the
24 maintenance of a healthy national finance and inter-
25 national peace, and after entering into wartime con-
ditions, continued to exert his efforts to prevent a

1 break-down of the national defense.

2 4. That he was against outbreak of war and
3 also the spread of hostilities and did everything in
4 his power to prevent them.

5 5. That his policies and method of carrying
6 them out were moderate and sound, respecting as much as
7 possible the will of the people.

8 6. That his policies and methods of carrying
9 them out met with disapproval of the military and he
10 was twice forced to withdraw from the Cabinet.

11 7. That he was not a politician or a
12 schemer and was not associated with any political,
13 military, leftist, or rightist groups. He was purely
14 a financial administrator and not a politician.

15 The above facts can be seen from the various
16 evidence adduced. The above-mentioned facts also
17 become clear from the various evidence referred to
18 in the arguments to follow. Here we wish to point
19 out the following two points:
20

21 1. The various evidence adduced during his
22 individual phase^a bear out our contention.

23 2. The KIDO Diary and the SAIONJI-HARADA
24 Diary records the public and behind-the-screen
25 activities of the statesmen and military men on

a. Ex. 3320, 3337; Tr. 30536-30660.

1 trial in this court, but no mention is made of KAYA
2 that might implicate him for criminal responsibility
3 as charged by the prosecution. Not a single excerpt
4 of the KIDO or the SAIONJI-HARADA memoirs were
5 tendered against KAYA.

6 KIDO has testified that he has known KAYA
7 since 1925,^{b.} the longest among the twenty-five
8 defendants. However, in the voluminous excerpts of
9 this diary tendered as evidence, the only time KAYA
10 is mentioned is in the diary of November 2, 1941,
11 which we tendered as evidence. If KAYA had been
12 politically ambitious or a political schemer, he
13 would no doubt have followed the footsteps of the
14 other politicians and have tried to "work" on KIDO
15 during the period KIDO held the influential positions
16 of Chief of the Secretariat of the Lord Keeper of the
17 Privy Seal and Lord Keeper of the Privy Seal. That
18 he did not is indicated by the lack of any such
19 mention in the KIDO Diary. It indicates that KAYA
20 was an earnest financial administrator who occupied
21 himself with his task.
22
23
24

25 b. Ex. 3340, Sec. 324, Tr. 31207.

N-9-3.

1 The prosecution in paragraph II-3 of its sum-
2 mation has stated that KAYA "held not less than 90
3 governmental appointive positions in various activi-
4 ties." The greater part of these positions were as
5 member or secretary of committees and concerned
6 largely with finance as is noted in his personnel
7 record.^a And it is clear from evidence that the posi-
8 tions mentioned were mostly nominal and
9 required no actual work on his part.^b KAYA's main
10 work, that is, the work that occupied his full time
11 and energy, is explained in paragraph (1) of his affi-
12 davit.^c The prosecution has inferred that as an
13 official of the Finance Ministry KAYA should have known
14 day by day what was going on in the government. This
15 inference drawn from the contention that KAYA held
16 numerous positions is not correct, for as stated, the
17 positions were mostly nominal and that he hardly had
18 any connection with international matters can be seen
19 from his personnel record.^d

20 The contention of the prosecution does not
21 prove in any way that KAYA was party to any conspiracy.
22 It is merely conjecture without proof.

23 The prosecution has charged that KAYA was a
24

- 25 a. Ex. 111, tr. 722
 b. Ex. 3341, tr. 31,675; ex. 3468, tr. 33,304; ex.
 3369, tr. 31,809; ex. 3473, tr. 33,379
 c. ex. 3337, tr. 30,635
 d. Ex. 111, tr. 722

1 member of the Opium Committee in 1934. This is a mis-
2 take. KAYA was a member of the Opium Committee from
3 March 6 to June 3, 1937.^a Evidence has been adduced
4 to show that during the period KAYA was a member of the
5 committee, the committee was purely nominal^b and was
6 merely ex-officio. Again, KAYA is charged as having
7 been counsellor of the Manchurian Affairs Committee,
8 but the prosecution has nowhere adduced any evidence
9 to show the duties and responsibilities of a counsellor
10 of the Committee, nor what KAYA did in that position.
11 Nor has the prosecution pointed out any activity of
12 the Committee during the period KAYA was counsellor.
13 The position of counsellor was purely nominal, like
14 most of the extra positions charged against him, and
15 actually he did nothing as a member of the committee.
16 Again, he is charged as having been a member of the
17 Colonization Plan Investigating Committee for Hokkaido,
18 but Hokkaido is part of Japan proper and its purely
19 domestic policy does not concern foreign countries.

20 The prosecution points out that KAYA attend-
21 ed the Geneva Conference in 1927 and the London Naval
22 Conference in 1929 as a member of the Japanese delega-
23 tions, and seems to attempt to apply a sinister meaning
24

25 a. Ex. 111, tr. 722.

b. Ex. 3335, tr. 30,623

to this. But actually KAYA made great contributions to these conferences by holding down the navy's demands from the financial point,^a as was brought out in the testimony of KOBAYASHI, Seizo, head of the navy representatives to the Geneva Conference; TOYODA, Teijiro, navy delegate to the London and Geneva Conferences and who later served as Foreign Minister in the Third KONOYE Cabinet; TSUSHIMA, Juichi, Finance Ministry representative to the London Conference; and KAWAGOE, Takeo, who was KAYA's superior in the Finance Ministry at the time of the Geneva Conference, and that of the defendant himself.^b To what extent the wishes of the Japanese Navy were suppressed at the London Conference can be seen from later developments. When the treaty came up for ratification, the Naval Supreme Command opposed it on the ground that the prerogatives of the Supreme Command had been infringed, leading to the assassination of the then Premier HAMAGUCHI and the May 15 Incident.

The prosecution contends that during the period from 1931 to 1936 fiscal year the army budget had increased. Against this contention we would like to point out the following:

a. Ex. 3334, tr. 30,620	Ex. 3324, tr. 30,576
b. Ex. 3329, tr. 30,600	Ex. 3334, tr. 30,619
Ex. 3328, tr. 30,597	Ex. 3337, tr. 30,637

1. Firstly, during the period KAYA was
merely an official of the Finance Ministry and acted
in accordance to the direction of the Minister and
other superiors; he was not in a position to decide on
the budgets.^a

2. Secondly, during this period the army
increased their power tremendously as the result of the
Manchurian Incident and the May 15 Incident, and used
its power in demanding an increase in military budgets.
The critical situation of 1935 and 1936 was made an
issue in seeking their demands.^b By this time the
military strongly insisted on the independence of the
Supreme Command, and its power became so great that the
cabinets and the public were in constant fear of the
military.

Even under such a difficult situation KAYA,
as a subordinate of Finance Ministers TAKAHASHI and
FUJII, helped the two ministers in applying brakes to
the increased demands of the military. Without the
efforts of KAYA, the military would have succeeded in
getting further increases. It was through his efforts
that the budgets were prevented from being larger, an
unusual accomplishment for an official of the Ministry.

a. Ex. 111; ex. 3334, tr. 30,621

b. Ex. 3775, tr. 37,650; ex. 3326, tr. 30,590

This fact is confirmed by the testimony of his then
 superior officials, Mr. TSUSHIMA, Juichi, who later
 became Finance Minister, and KAWAGOE, Takeo, who was
 his superior officer at that time; by the testimony
 of UCHIDA, Nobuya, who was then Minister of Railways;
 by the testimony of Admiral KOBAYASHI, Major-General
 OKAZAKI, and Vice-Admiral TATEMOTO, who were the men
 in the army and navy having charge of military budgets
 at the time, and by the testimony of GOTO, Takanosuke,
 a close friend of the late Prince KONOYE, and that of
 KAYA himself.^a What efforts he made and what pains he
 suffered in bucking the all-mighty military can be
 appreciated by going over the above-mentioned testimony.
 His stubborn resistance against the powerful military
 endangered the life of one cabinet,^b and because of
 his resistance he was termed an anti-militarist who
 interfered with the prerogatives of the Supreme
 Command^c and endangered national defense. The military
 men believed that it was KAYA who was instrumental in
 enforcing the anti-military policy of Finance Minister

a. Ex. 3324, tr. 30,577-79; ex. 3325, tr. 30,584;

Ex. 3326, tr. 30,588; ex. 3327, tr. 30,594;

Ex. 3329, tr. 30,600; ex. 3330, tr. 30,607;

Ex. 3337, tr. 30,636; ex. 3334, tr. 30,622

b. Ex. 3325, tr. 30,584

c. Ex. 3326, tr. 30,590; ex. 3327, tr. 30,594

TAKAHASHI, which became one of the causes of the February 26 Incident in which TAKAHASHI was assassinated.^a The Incident put an end to the OKADA Cabinet and was followed by the HIROTA Cabinet which gave in to the demands of the military. BABA, who became Finance Minister in the HIROTA Cabinet, removed KAYA from the post of Chief of the Accounts Bureau, accepted the demands of the military, and rejected the TAKAHASHI policy, the result of which was a feeling of uncertainty^b among the economic and financial circles.

The prosecution has charged that KAYA complied with the demands of the military. The charge is far from correct. The military, for instance, was very much dissatisfied with TAKAHASHI and KAYA, and for this reason Prince KONOYE hesitated in appointing KAYA Finance Minister.^c

In paragraph II-6 the prosecution stated that KAYA assisted Finance Minister YUKI as Vice-Minister in combatting the military, but the cut he obtained was "a mere fraction." The size of the cut, however, is not a fair basis of judging KAYA's intention and efforts, for the power of the military by that

a. Ex. 3324, tr. 30,577; ex. 3326, tr. 30,590

b. Ex. 3324, tr. 30,579; ex. 3327, tr. 30,596;
Ex. 3322, tr. 30,553-8

c. Ex. 3330, tr. 30,607

1 time was far greater than what it was when he was
2 Chief of the Accounts Bureau. In 1936, while he was
3 chief of the Accounts Bureau, the so-called February 26
4 Incident took place. This Incident made the general
5 public regard the military with extreme fear. It was at
6 this time the system of limiting the War and Navy
7 Ministers to officers in active duty,^a and the decisive
8 power of the military became a fact as well as in
9 theory. When UGAKI was commanded to form a cabinet
10 following the fall of the HIROTA Cabinet, the army
11 opposed him, so he was not able to form a cabinet.
12 The army made it clear that it had the power to prevent
13 the formation of any cabinet or break any cabinet
14 in power.^b Under such a situation KAYA's success in
15 cutting the demands of the military to any extent
16 must be regarded as a great achievement. It was a time
17 when the public was concerned as to how far the mili-
18 tary budgets would go, and the cut on their demands had
19 a good effect in soothing the feeling of uncertainty
20 harbored by the economic and financial circles.^c

21 The prosecution has implied in II-7 that
22 there was a sinister meaning connected with KAYA's
23

24 a. Tr. 16,857-8

25 b. Ex. 3322, tr. 30,553; tr. 1608-9

c. Ex. 3322, tr. 30,553

entrance into the First KONOYE Cabinet. Their implication is a mere conjecture that disregarded the actual conditions in Japan at the time as shown by the evidence adduced.

The prosecution has contended that the efforts on the part of the Finance Minister YUKI and Vice-Minister KAYA to check the growing military expenditures were a failure. As already explained, it was no easy matter to curtail demands of the military which had grabbed absolute political power by means of the February 26 Incident and instituting ~~system~~ whereby only officers in active duty could become War or Navy Ministers. Finance Minister TAKAHASHI tried to stop the fast encroaching military power and was assassinated, and the 1937 military budget was approved by Minister BABA as requested by the military. When KAYA became Vice-Minister, this 1937 budget, as far as the government was concerned, stood decided^a and to reduce a budget already decided was many times more difficult than reducing budgets which were still pending. KAYA accomplished the impossible task and succeeded in shaving a part of the military budget already decided. Whether this was a success or a failure must be judged in the light of the conditions existing at that time.

a. Ex. 3322, tr. 30,553.

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The prosecution has contended that KAYA joined the First KONOYE Cabinet knowing that with him in the Cabinet would be powerful military men. We wish to point out that the Army and Navy Chiefs of Staff, Army Vice-Chief of Staff and Chief of the Kwantung Army were not members of the Cabinet, nor part of it. When KAYA joined the Cabinet he did not dream he could control the military completely. The situation at that time was that all the statesmen combined could not resist the military. Four months prior to his appointment to the Cabinet post KAYA was a mere bureau chief in the Finance Ministry without any political leaning or power. Then why did he join? The testimony of YUKI, Toyotaro sheds light on this point:

"Fearing that such expansion policies as upheld by my predecessor might come to reassert itself and convinced of the necessity of adhering to the policy of strict economy followed by me, I recommended Mr. KAYA to Prince KONOYE for the post of Finance Minister."

At that time there were many political climbers who played up to the military. YUKI saw this in BABA. KAYA thought that his becoming the Finance

a. Ex. 332, T. 30,555

1 minister was more helpful to the healthy economy of
2 Japan than any one else assuming that post. He be-
3 lieved so because he had long years of experience
4 with military budgets and he himself sincerely be-
5 lieved that he was most faithful in the maintenance
6 of Japanese finance.

7 A month after KAYA assumed his post the
8 China Incident broke out. The Incident made in-
9 crease in military expenditures inevitable. KAYA
10 endeavored to keep the increases as low as possible
11 and the consensus of the knowing Japanese at that
12 time was that no one could have done better than
13 KAYA. The best proof of this is that the military
14 was dissatisfied with KAYA and forced his resigna-
15 tion.^a

16 N-9-8

17 The prosecution contended that "policies
18 that reached far into the future" were formed during
19 the days immediately preceding the First KONOYE
20 Cabinet and KAYA must have known about them.

21 1. The first "far-reaching" policy men-
22 tioned is the Anti-Comintern Pact. This Pact was
23 concluded on November 25, 1936^b when KAYA was Chief
24

- 25 a. Ex. 3330, T. 30,608; Ex. 3329, T. 30,600
Ex. 3337, T. 30,641; Ex. 3322, T. 30,555
b. Ex. 36, T. 5934-6

of the Financial Bureau,^a under Finance minister
1 BABA who did not like KAYA. KAYA certainly did not
2 have anything to do with the conclusion of the
3 Pact.^b

4 2. As regards the so-called "incidents"
5 in Manchuria, KAYA had no connection with them nor
6 has the prosecution adduced any evidence to show
7 KAYA had a part in them.^c There is no evidence
8 that KAYA was connected with the military activities
9 in North China and with the Japanese policies in
10 Manchukuo. In 1936 the Finance Minister was the
11 pro-militarist BABA with whom KAYA did not see eye
12 to eye resulting in KAYA's transfer to the Financial
13 Bureau. The conjecture of the prosecution is en-
14 tirely without grounds.
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23 a. Ex. 111, T. 722

24 b. M. 5000; T. 5902

25 c. Ex. 3334, M. 30,620; Ex. 111, T. 722

B. Second Period.

N-9-9.

The prosecution alluded to the Five Year Program of Important Industries and the Five Year Plan for the Production of War Materials in paragraph 11-8, but as the execution of these plans took place after KAYA became Finance Minister I shall discuss them at this time.

The prosecution has contended that these two plans formed the basis for a plan of a war of aggression, but adduced no evidence to prove their contention. Their contention is no more than a conjecture without proof. There is no need for me to go into a discussion as to whether or not the two plans were part of a plan for a war of aggression for KAYA did not adopt the plans nor aided in their execution. He did not even know such plans existed. He heard of them for the first time in this very courtroom.

1. The testimony of OKADA, Kikusaburo, who drafted the plans in question, testified in this court to the following effect:

a. The plan referred to in exhibit 841 concerned the Army only and was not submitted to the other ministries or to the Cabinet.

a. T. 18,282, 18,325

1 b. The Five Year Program for Important
2 Industries (exhibit 842) was unofficially referred
3 to the Cabinet and concerned ministries as reference,
4 but nothing was done about it on account of the
5 China Incident until January 1939 when a part of the
6 plan received Cabinet approval. This was over
7 eight months after KAYA had resigned.^a

8 c. The various ministers did not know
9 about this plan.^b

10 2. YOSHINO, Shinji, who was Minister of
11 Commerce and Industry in the same Cabinet with KAYA
12 and who resigned at the same time with KAYA has testi-
13 fied in the court that he did not know such a plan
14 existed.^c

15 3. If such a plan had been referred to the
16 Cabinet, it would have been submitted to the Planning
17 Board for study and investigation. However, when
18 UYEMURA, Kogoro, who was department head of the
19 Planning Board from October 1937 to January 1940,
20 testified in this court he said he did not know of
21 any such plan.^d

22 4. Witness Liebert, when cross-examined,
23

- 24 a. Ex. 111, T. 18,309
25 b. T. 18,311
 c. T. 18,232.
 d. Ex. 2802, T. 25,197

1 testified that he did not know whether the plan was
2 adopted by the cabinet.^a

3 5.. ISHIWATA, Shotaro, who was Vice-Minister
4 of Finance under KAYA, testified that he did not
5 know of such a plan and that the Finance Ministry
6 did not adopt nor refer to such a plan.^b

7 6. KAYA, himself, has also testified in a
8 similar vein.^c

9 7. Exhibit 2227 adduced by the prosecution
10 does not mention anywhere that KAYA was acquainted
11 with the plan.

12 The above mentioned evidence proves con-
13 clusively that KAYA knew nothing about such a plan. .
14 N-9-10

15 The prosecution in paragraph II-10 stated
16 that Japan in February, 1936 began to emphasize
17 state control of economy, mentioned briefly about
18 oil, coal and establishment of heavy industries in
19 Manchukuo and attempted to give the impression that
20 KAYA was responsible for them, without having ad-
21 duced any evidence to support their contention.
22 KAYA did not become Finance Minister until June,
23 1937 and the controlled economy emphasized by the
24

- 25 a. T. 8570
b. Ex. 3321, T. 30,548
c. Ex. 3337, T. 30,641

1 prosecution in their summation was put into effect
2 when BABA was Finance Minister during the critical
3 time following the February 26th Incident.^a KAYA
4 during this period was Chief of the Finance Bureau,
5 a post which had no responsibilities in deciding
6 policies.^b

7 N-9-11

8 In respect to the reference to the China
9 Incident we wish to call the attention of the Tri-
10 bunal to KAYA's testimony on this point:^c

11 "I became Minister of Finance on June 4,
12 1937 and I knew nothing about the Lukouchiao Inci-
13 dent before its outbreak. The Cabinet made no
14 plan or preparation for the Incident. I learned
15 about it for the first time after the outbreak of
16 the Incident and the report was that hostilities
17 between the Chinese and Japanese broke out due to
18 illegal attack by the Chinese. The Cabinet, of which
19 I was a member, decided on a policy to regard the
20 Incident as a local incident and to settle it on
21 the spot as soon as possible. It was against the
22 sending of troops from Japan, but if that became
23 inevitable to limit the troops to a small number.

24 a. T. 8543; Ex. 3324, T. 30,579

25 b. Ex. 3324, T. 30,549; Ex. 3327, T. 30,596

c. Ex. 3337, T. 30,640

1 The sending of troops was due to the Army report that
2 continued illegal attacks on the part of the Chinese
3 troops and the massing of their forces in the area were
4 going on; so when the Army requested an increase in
5 troops in order to protect the lives and interests of
6 Japanese in that area, the Cabinet could not help but
7 give its assent. The Cabinet's motive in assenting to
8 the requests for sending troops by the Army was to protect
9 the lives and interests of Japanese nationals and the
10 small Japanese force stationed there in accordance to
11 treaty. "I opposed especially the dispatching of
12 troops to Shanghai for I believe it would spread the
13 Incident wider. I asked for reconsideration, but my
14 request came to no avail for the other Cabinet members
15 thought the dispatching of troops was necessary in
16 order to protect Japanese interests. However, on every
17 occasion I tried my best to limit the budgets required
18 for the dispatching of troops."

19 This testimony clearly shows that KAYA was
20 not party to any aggression. It shows that KAYA
21 and the Cabinet of which he was a member were opposed
22 to the dispatching of troops and agreed to it only
23 when the situation became inevitable and even then
24 endeavored to limit the troops to a minimum.

25 KAYA's testimony just quoted is confirmed

1 by the testimony of SHIONO,^a who was Minister of
2 Justice in the same Cabinet. This point was not
3 contradicted.

4 KAYA strongly opposed the dispatch of
5 troops to Shanghai. An episode confirming this
6 was unexpectedly introduced into court during the
7 presentation of evidence for HIROTA on February 2,
8 1948. Prosecutor Comyns Carr in objecting to de-
9 fense document No. 3014, mentioned the fact that "the
10 document contained a passage in which the Navy
11 Minister shouted at the Finance Minister in the
12 Cabinet Meeting."^b The document in question is an
13 excerpt of the SAIONJI-HARADA Diary of August 1937
14 and speaks of the Cabinet meeting when the question
15 of dispatching troops to Shanghai was discussed.
16 The passage referred to by the prosecutor indicates
17 how strongly KAYA, who was the Finance Minister,
18 opposed the dispatching of troops to Shanghai. As
19 far as KAYA was concerned, his only source of infor-
20 mation on which he based his decision was the re-
21 ports of the Military and Foreign Office. KAYA,
22 having been a civilian minister, was not informed
23 about operations beforehand nor consulted about them.^c

25 a. Ex. 3320, T. 30,536

b. T. 38,661

c. Ex. 3337, T. 30,640; Ex. 3320, T. 30,538

1 This is confirmed by other evidence such as the
2 independence of the Supreme Command tendered by
3 both the prosecution and the defense.

4 The prosecution has stated that the Cabinet
5 on July 11, 1937 decided to send a larger army to
6 North China, that KAYA approved this and that this
7 was the beginning of the Sino-Japanese War. We do
8 not agree with this contention. As far as KAYA
9 was concerned, he did not agree to start a war
10 against China, nor did he agree to send a large
11 army. What he agreed to was to send a minimum army
12 necessary to safeguard Japanese nationals and inter-
13 ests from Chinese attacks, and it clearly stated
14 that the troops dispatched were to be returned home
15 as soon as the Incident, which was then regarded as
16 a minor local incident, was settled. KAYA believed
17 that the Cabinet's decision was not only inevitable,
18 but justified, and judging from the situation at
19 the time it was only natural for KAYA to have be-
20 lieved so. On this point, we wish especially to
21 call the attention of the Tribunal to the testimony
22 of KAYA, SHIONO and HORINOUCI.^a KAYA's belief that
23 lives of Japanese nationals, their interests and the
24 safety of the small Japanese troops were in danger
25

a. Ex. 3260, T. 29,687-9; Ex. 3320, T. 30,537.
Ex. 3337, T. 30,639-40

1 due to the increase and massing of Chinese troops
 2 was justified and can readily be understood by perus-
 3 ing reports obtained by Japan.^a It was natural that
 4 these reports were read and discussed and formed
 5 the basis for the Cabinet's decision.

6 KAYA resigned from the Cabinet in May, 1938,
 7 long before the Incident had spread to the focal
 8 points of Hankow in Central China and Canton in
 9 Southern China and his resignation was due to pres-
 10 sure by the military and to the fact that he har-
 11 bored doubt as to whether Japan's policy was wise
 12 or was within the sphere of necessity.^b

13 N-9-12

14 It is a fact that Japan's military budgets
 15 increased and a Temporary Special Military Account
 16 was set up in 1937, but these were due to the out-
 17 break of the China Incident, and beyond the control
 18 of KAYA. The best test, we believe, as to whether
 19 or not KAYA had any criminal responsibility in
 20 connection with the China Incident, is his attitude
 21 towards the Incident. On the matter of increase
 22 in military budgets, KAYA has testified:

- | | | | | |
|----|----|-----------------------|----|---------------------|
| 23 | a. | Ex. 2481, T. 20,570 | b. | Ex. 111, T. 722 |
| 24 | | Ex. 2582, T. 21,974 | | Ex. 3329, T. 30,602 |
| | | Ex. 2518, T. 21,246 | | Ex. 3330, T. 30,608 |
| 25 | | Ex. 2487, T. 20,628-9 | | Ex. 3323, T. 30,573 |
| | | | | Ex. 3337, T. 30,641 |

1 "On every occasion I tried my best to limit
2 the budgets required for the dispatching of troops."^a

3 This was confirmed unexpectedly by evidence
4 adduced by other defense counsel.

5 Witness TANAKA, Shinichi has testified that
6 KAYA reduced the Army's request for three months
7 expenditures for dispatching troops to North China
8 to two months. Again TANAKA has testified that
9 the Army was hard put during the operations against
10 Hankow and Canton due to insufficient funds.^b

11 The evidence just referred to indicates
12 that KAYA hoped the Incident would be settled early
13 and was against its spreading.

14 In connection with the great increase in
15 the 1937 military budget, we wish to call the atten-
16 tion of the Tribunal that the budget for 1937 (ex-
17 cept expenditures for China Affairs) was in reality
18 decided in the autumn of 1936 when Finance Minister
19 BABA accepted the Army's demand in total. KAYA
20 had no connection with this increase.^c

21 N-9-13

22 I wish to explain briefly at this point
23 KAYA's position in the First KONOYE Cabinet in con-

- 24 a. Ex. 3337, T. 30,640
25 b. Ex. 2488, T. 20,689
c. Ex. 3322, T. 30,553

nection with the China Incident. In short, KAYA was
1 not among those who held the actual power of making
2 a decision. The Tribunal is well acquainted with
3 the various evidence in reference to the Five
4 Ministers' Conferences. The Five Ministers' Confer-
5 ences were frequently held during the HIROTA and
6 OKADA Cabinets and by the First KONOYE Cabinet after
7 the Cabinet change in May 1938. (KAYA resigned dur-
8 ing the Cabinet reshuffle.) These Five Ministers'
9 Conferences decided on important matters. While
10 KAYA was in office during the First KONOYE Cabinet,
11 important matters were decided by either the Four
12 Ministers' Conference composed of the Premier,
13 Foreign, War and Navy Ministers or the Three Minis-
14 ters' Conference made up of the Foreign, War and
15 Navy Ministers. Evidence shows that in connection
16 with these ministers' conferences, preparations or
17 investigations were conducted at conferences com-
18 posed of the Vice-Ministers and other subordinate
19 officers of the Foreign, War and Navy Ministries.^a
20 KAYA and the Finance Ministry were not included in the
21 setup. His exclusion, to a large measure, was due
22

23 a. Ex. 3260, T. 29,692-701; Ex. 3734, T. 37,164;
24 T. 22,028, 22,029, 22,034, 22,075-6;
25 Ex. 3876, T. 38,671-3, T. 39,259

to his weak political position. The Finance Minister
1 in the OKADA Cabinet, TAKAHASHI, and the Finance
2 Minister in the First KONOYE Cabinet who took his
3 place, IKEDA, were regarded in high esteem by the
4 public because of their age and fine records. The
5 Finance Minister in the HIROTA Cabinet, BABA, was
6 ten years older than KAYA and on good terms with
7 the military. KAYA, however, was nothing more than
8 a bureau chief in the Finance Ministry but four
9 months before he became Finance Minister.^a He was
10 a career Finance Minister, a man without the backing
11 of a political party or a financial clique. His
12 standing with the military was anything but good
13 for he had for many years bucked against the mili-
14 tary on the matter of budgets. He stood in an
15 extremely weak political position.
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1 In almost every country we find two categories
2 of state ministers: the first with power to decide on
3 state policies and the second, that do not participate
4 in the making of policies but merely administer poli-
5 cies decided by others in the name of the whole as heads
6 of ministries. That KAYA belonged to the latter group
7 is evident from the foregoing explanation.

8 There is no evidence that as Finance Minister
9 in the First KONOYE Cabinet, KAYA entrusted the making
10 of decisions in connection with the China Incident with
11 the Three Ministers and Four Ministers Conferences.

12 N-9-14. The prosecution in II-13/14 quoted
13 KAYA's testimony: "I was occupied with the difficult
14 task before me and I did not dream about a preparation
15 for a future war," and branded the testimony as "a
16 deliberate lie." He is further charged as having
17 made speeches and written articles "in an effort to
18 justify his actions, as well as the decisions of the
19 Cabinet;" that, "he never condemned the increasing
20 activities and control of the military;" that, "at
21 that time Japan's economy was placed on a wartime basis;"
22 and that he was "an active and willing conspirator."

24 Allow me to reply to these accusations:

25 1. When Kaya said he did not dream of a future

1 war he meant the Pacific War and this is clear from
2 paragraph 4-e of his affidavit.^a

3 KAYA has testified that he knew nothing about
4 the two five-year plans of the Army labeled by the
5 prosecution as preparations for the Pacific War, and
6 that he had his hands full with financial measures to
7 counter the unexpected outbreak of the China Incident.
8 KAYA has not denied that he took financial measures in
9 connection with the China Incident; his hands were full
10 looking after the financial measures in connection with
11 the China Incident and had no time to even dream of
12 preparations for the Pacific War. KAYA has not told
13 any "deliberate lies." The following evidence confirms
14 this:
15

16 From the time prior to the China Incident, the
17 financial conditions of the country were anything but
18 good; the Finance Minister KAYA was hard-pressed
19 untangling the unsatisfactory conditions. On top of
20 the unstable economic condition, there was the powerful
21 military and rightist groups whose radical and high-
22 pressure demands only added to the economic and
23 financial distress and uncertainty.

24 Such was the condition when the unexpected
25 China Incident broke out. As the Incident spread,

1 war he meant the Pacific War and this is clear from
2 paragraph 4-e of his affidavit.^a

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4 the two five-year plans of the Army labeled by the
5 prosecution as preparations for the Pacific War, and
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11 the China Incident and had no time to even dream of
12 preparations for the Pacific War. KAYA has not told
13 any "deliberate lies." The following evidence confirms
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18 untangling the unsatisfactory conditions. On top of
19 the unstable economic condition, there was the powerful
20 military and rightist groups whose radical and high-
21 pressure demands only added to the economic and
22 financial distress and uncertainty.
23

24 Such was the condition when the unexpected
25 China Incident broke out. As the Incident spread,

1 contrary to the wishes of KAYA, military budgets
2 increased, bond flotations increased and added to the
3 feeling of uncertainty that pestered the economic and
4 financial circles. As the country entered into a
5 quasi-wartime condition, the power of the military and
6 the rightist groups became stronger and their demands
7 for radical and dangerous economic and financial meas-
8 ures became stronger. Such was the situation KAYA
9 faced and he exerted his every effort to forestall
10 financial and economic chaos and pacify the growing
11 feeling of uncertainty among the people.

12 Witness YUKI has testified:^a

13 "In June the same year Mr. KAYA became Minister
14 of Finance, but due to the outbreak of the China
15 Incident soon afterward the feeling of uneasiness in
16 economic circles aggravated. Such difficult problems
17 as financial stringency, abnormal fluctuation of stock
18 exchange market, pressure of increased demand for funds
19 cropped up one after another. The China Incident ex-
20 tended to Shanghai area and everything came to assume
21 a wartime aspect. As things went on in this way, some
22 among the so-called reformists or the radicalists
23 impatiently demanded a drastic reform in the economic
24 set-up of the country, calling for the nationalization
25

a. Ex. 3322, T. 30,558

1 of financial organs, the thoroughgoing control of
2 economy, etc., and this threw the economic circles into
3 profound uneasiness and terror."

4 Again on page 8 of his affidavit, YUKI has
5 testified as follows:

6 "Mr. KAYA, as the Minister of Finance, endeav-
7 ored to adjust capital investments, ease credit, check
8 the rise of interest rate on loans, stabilize the
9 security market and thus keep open the stock exchange
10 and ease the anxiety of the financial circle."

11 Witness TSUSHIMA has testified:^a

12 "In July the Sino-Japanese hostilities broke
13 out. The demands for increased military expenditures,
14 expansion of production and what-not, became intensified;
15 the financial circle was overtaken by uneasiness more
16 than ever. KAYA, as the Finance Minister, racked his
17 brains to keep the scared finance in order through
18 maintaining the exchange rates, controlling the supply
19 of industrial funds, easing the credit stringency,
20 checking the advance in money rates, averting the clos-
21 ing of the stock exchanges, stabilizing the security
22 market, moderating the panic-stricken sentiment of the
23 financial circle and preventing the self-diffidence,
24 etc. The plight then was such that whoever might
25

a. Ex. 3324, T. 30,579

1 become Finance Minister, it would be the utmost of his
2 power to maintain the order of the financial circle,
3 leaving no room for anything like a preparation in the
4 field of economics and public finance for a future war
5 of aggression."

6 This testimony was not contradicted.

7 2. The prosecution has contended that during
8 the period KAYA was Finance Minister, Japan's economy
9 was established on a wartime basis. However, it was
10 not until January, 1939 or eight months after KAYA
11 resigned that a part of the Army Five-Year Plan was
12 adopted.^a Perusal of the prosecution's evidence on
13 this point will reveal the far greater portion of the
14 important wartime measures were adopted after KAYA
15 resigned from the cabinet. However, it is contrary to
16 facts to conclude that the measures taken by him were
17 in preparation for a war of aggression. In present-day
18 Japan under a new constitution that outlaws war, similar
19 measures that were adopted under KAYA, such as Adjust-
20 ment of Funds and Encouragement of Savings, are being
21 carried out by the Japanese Government. These are
22 necessary measures for the absorption of the people's
23 buying power and controlling supply of industrial funds
24 in times when there is an over-supply of currency in
25

a. Ex. 842, T. 8270

1 circulation and a great demand for capital. We repeat,
2 the prolonging and expansion of the China Incident were
3 contrary to KAYA's fond wishes. But when it did spread,
4 it was only proper to adopt adequate measures to meet
5 the changed situation. The gist of the matter is whether
6 the measures were adopted with the intention of waging a
7 war of aggression or whether the measures were adopted
8 to meet an unexpected situation. The motive back of the
9 measure should be the test. We have shown the situation
10 that faced KAYA as Finance Minister and why it was nec-
11 essary for him to adopt such measures as encouragement
12 of savings and adjustment of funds, and that KAYA did
13 not for a moment think they were for preparation for
14 a war of aggression.

15 3. The prosecution has contended that while
16 claiming his hands were full, KAYA found time to make
17 speeches and therefore he was deliberately lying.
18 This is a most unfair conclusion. Witnesses have
19 testified of the chaotic economic conditions that
20 necessitated measures such as the Fund Adjustment and
21 Encouragement of Savings on a grade scale, which the
22 people had not experienced heretofore. The people's
23 understanding was necessary. KAYA disliked to force his
24 measures on the people^a and chose a voluntary method.
25

a. Ex. 3222, T. 30,558; Ex. 3323, T. 30,569-72.

1 By means of speeches, he meant to seek the cooperation
2 of the people. Speech-making became part of his work
3 to prevent the collapse of the financial and economic
4 order. He did not go around making speeches to defend
5 himself.

6 4. The prosecution has contended that KAYA did
7 not condemn the acts of the military. The military,
8 looking at it from the broad point of view, was a part
9 of the government. The War and Navy were attacked in
10 cabinet meetings, it was another matter to criticize
11 them publicly. Any public criticism of the military
12 was a grave matter and any man making the criticism,
13 even if it was a justified criticism, was sure to have
14 the military upon him. If KAYA had openly criticized
15 the military he would undoubtedly have been forced to
16 resign, not that it mattered to him, but it was cer-
17 tain that someone more in tune with the military would
18 have been appointed and his moderate policies would
19 have been cast aside in favor of more radical and
20 dangerous policies.

21 The witness AKASHI has testified:

22 "Many people were doubtful as to whether they
23 were able enough to dispose of the demands on the part
24 of the radical forces and to proceed with moderate
25

policy in maintaining the situation."^a

1 The testimony just referred to gives an idea
2 of the difficult situation. It was necessary to avoid
3 dangerous measures, without clashing with the military,
4 as much as possible. The work called for extreme
5 patience, but it was necessary for the good of the people
6 and the country.
7

8 At the London Naval Conference, Premier
9 HAMAGUCHI exercised a strong hand over the Navy. Prem-
10 ier HAMAGUCHI did gain temporary victory, but because
11 of it he was assassinated and gave rise to the May 15th
12 Incident and through this Incident the military enhanced
13 their power and the Supreme Command's independence be-
14 came universally recognized.

15 Finance Minister TAKAHASHI long fought against
16 the military and succeeded in suppressing them to a
17 great measure. The result was the February 26th
18 Incident in which TAKAHASHI was assassinated. Through
19 this Incident the military gained absolute power and
20 the military budget was at once increased by Finance
21 Minister BABA.^b
22

23 At the London Conference and during the TAKA-
24 HASHI opposition against the military, KAYA worked hard

25 a. Ex. 3323, T. 30,572

 b. Ex. 3322, T. 30,553; Ex. 3324, T. 30,579

1 to suppress the military. He remembers well the tempor-
2 ary success and their aftermath.

3 When KAYA was Finance Minister the power of the
4 military was far greater than what it was during the time
5 time of HAMAGUCHI or TAKAHASHI and in comparison KAYA
6 had far less power than either of them. To avoid clash-
7 ing with the military and to pursue a course away from
8 radicalism was the only road open to KAYA. Only by
9 this course could he serve his people and country.^a But this
10 does not mean agreeing to an illegal act. We have
11 clearly shown that KAYA was not an "active and willing
12 conspirator", as charged by the prosecution.

13 N-9-15. In paragraph II-15, the prosecution
14 has mentioned about KAYA's speeches in exhibit 3338-A.
15 The prosecution has pointed out the topic of the
16 speeches was "Armed War and the War of Economy," but
17 perusing the book "Wartime Economic Life"^b, we note
18 that the speeches are grouped under the heading "Japan's
19 Economic Power." "Armed War and the War of Economy" is
20 a sub-heading under it. This, however, is not important.
21 The topics mentioned were chosen by the editor of the
22 book, and not KAYA. The important thing is the content
23 of the speeches.
24

25 a. Ex. 3323, T. 30,572
b. Ex. 3338, T. 30,665

1 While it is evident from the part of the speech
2 that was read into the record, we note upon reading the
3 whole speech that the gist of the speech is: to what
4 extent can the Japanese economy withstand war expend-
5 itures? The speech goes on to explain that considering
6 its economic status, Japan was capable of shouldering
7 a wartime expenditure of Yen 20,000,000,000.^a

8 The question is whether or not KAYA had insist-
9 ed that war efforts should be pushed because the country
10 was able to bear an expenditure of 20,000,000,000. The
11 speech does not contain anything of the sort. On the
12 contrary, the speech bemoans the spread of the China
13 Incident.

14 We shall now go into the motive of the speech.
15 KAYA mentioned in the speech that as the military
16 expenditures approved by the Diet ran up to a huge sum
17 he thought there were many people who had doubts as
18 to whether or not the Japanese economy could shoulder
19 such an expenditure.^b This was a very important and
20 grave problem at that time. We have seen from the
21 testimony of YUKI, AKASHI and TSUSHIMA that the uncer-
22 tain economic conditions that prevailed prior to the
23 outbreak of the China Incident became much more pronounc-
24

25 a. Ex. 3338-A, T. 30,667

b. Ex. 3324, T. 30,579

ed on account of the Incident. A financial administrator must consider as especially important, the psychology of the people. If a state of economic chaos existed and the financial circle regarded it in an exaggerated light, the actual conditions would become that much worse. Uncertainty and disorder actually made the situation worse. Such being the case, it becomes an important job for the financial administrators to remove any uncertainty that the people might entertain. Witness TSUSHIMA has testified that, "KAYA, as Finance Minister, racked his brain to keep the scared finance in order . . . and prevent self-diffidence . . ."

The time was critical and KAYA, as Finance Minister, could not announce a pessimistic outlook; it was necessary for those in charge of financial administration to caution the people in time of financial stability and make the people feel calm in time of uncertainty.

By his speeches, KAYA did not attempt to drum up war fever. He made those speeches in an attempt to alleviate the undesirable situation caused by the Incident.

When he stated that it was necessary to meet the demands of the Army and the Navy, he did so because he could not have said otherwise as a member of the

Government. Troops were dispatched because they had to be dispatched and what he did was inevitable on account of it. It has already been stated that he opposed the decision to send troops to China, but that was a matter over which he had no control. Moreover, the speeches in question were made in October 1937 or about two months after the Incident had spread to the Shanghai area, as may be noted at page 26 of Exhibit 3338 (Japanese original)^a and not at the beginning of the Incident. They were made at a time when the Incident had spread against his wishes.

It is contended that KAYA referred to the Incident as a de facto war. The actual battles at the time between the Japanese and Chinese forces and their effect on the finance and economy of Japan made the Incident no different from a war. It was inevitable that the financial measures take on the aspect of war.

N-9-16. The prosecutor has taken up Mr. KAYA's speech delivered in April 1938 in which he urged "Preparedness for a Prolonged War." The conclusion the prosecutor has drawn from it is entirely wrong and he is thus giving a wrong hint or suggestion to the Court.

(1) The real caption of this speech was "How to Serve the Country by Savings."

a. T. 30,665

1 THE PRESIDENT: Mr. Levin, it is now four
2 o'clock. We will adjourn until half past nine tomorrow
3 morning.

4 (Whereupon, at 1600, an adjournment
5 was taken until Tuesday, 30 March 1948, at
6 0930.)

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